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October 27, 2004

**VIA FACSIMILE (202-219-3923) AND
CERTIFIED MAIL**

Federal Election Commission
999 E Street NW
Washington, DC 20463
ATTN: Office of General Counsel

Re: MUR 5525

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 NOV - 1 A 10:21

Dear Federal Election Commission:

On behalf of President George W. Bush and Vice President Richard B. Cheney as candidates for federal office, Karl Rove, David Herndon and Bush-Cheney '04, Inc., this letter responds to the allegations contained in the complaint filed with the Federal Election Commission (the "Commission") by Kerry-Edwards 2004, Inc.

The Kerry Campaign's complaint alleges that Bush-Cheney 2004 and fourteen other individuals and organizations violated the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 *et seq.*) ("the Act"). Specifically, the Kerry Campaign alleges that individuals and organizations named in the complaint illegally coordinated with one another to produce and air advertising about Senator. Kerry's military service.

Considering that no entity by the name of Bush-Cheney 2004 appears to exist, Bush-Cheney '04, Inc. ("Bush Campaign") presumes that the Kerry Campaign mistakenly filed its complaint against a non-existent entity and actually intended to file against the Bush Campaign. Assuming that the foregoing presumption is correct, the Bush Campaign, on behalf of itself and President George W. Bush, Vice President Richard B. Cheney, Karl Rove, David Herndon (the "Parties"), responds as follows:

Response to Allegations Against President George W. Bush, Vice President Richard B. Cheney, Karl Rove, David Herndon and Bush-Cheney '04, Inc.

The Kerry Campaign's complaint baselessly alleges illegal coordination between the Parties and Swift Boat Veterans for Truth ("SBVT"). Specifically, the Kerry Campaign alleges that through its coordination with SBVT, the Bush Campaign: 1) accepted illegal contributions; 2) raised and spent soft money; 3) concealed spending from the Commission; and 4) falsely omitted its authorization of ads from the disclaimer. The Parties flatly deny any coordination with Swift Boat Veterans for Truth and all of the

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associated allegations. The complaint should be promptly dismissed since the Kerry Campaign has failed to provide any factual basis for the alleged violations of the Act.

There is no evidentiary support for the Kerry Campaign's allegation of coordination. Indeed, SBVT spokesman John O'Neill has repeatedly denied any such connection in the strongest possible terms. When asked by Sean Hannity whether SBVT had "...any connection to the Bush Campaign..." Mr. O'Neill responded: "Absolutely no connection at all. If John Kerry were running as a Republican, everyone of us would be here, all the guys from his unit, exactly the same way." Further asked if they would stop running the ads if President Bush asked them to, Mr. O'Neill responded "I'd tell him, 'forget it.' It's not a matter of politics to us." [See Attachment A, *Battle Over Kerry's Vietnam Service*, HANNITY & COLMES, Aug. 19, 2004.]. Faced with this conclusive rebuttal of any connection, the Kerry Campaign's complaint relies on a series unsubstantiated accusations, all of which lack factual support.

As the attached CNN Inside Politics verified transcript demonstrates [See Attachment B, *Swift Boat Battle*, CNN INSIDE POLITICS, Aug. 20, 2004], Mr. Kerry's own spokesman, Tad Devine, could not present even one piece of hard evidence to back up the Kerry Campaign's allegations of illegal coordination between the Bush Campaign and SBVT. Indeed, the Kerry campaign is largely basing its charges on a newspaper article. When asked about the evidence linking the Parties to the SBVT ads, Kerry Campaign spokesman Mr. Devine could offer only that "...it's in the New York Times today." However, not even the newspaper article to which he referred presents evidence of "coordination." Indeed, Wolf Blitzer was forced to correct Mr. Devine on this very point. Blitzer told Mr. Devine that he had personally interviewed the New York Times reporter who wrote the story, who confirmed that "[The New York Times doesn't] have any hard evidence backing it up." To date, all that has been reported are the Kerry Campaign's unsubstantiated charges and explicit denials from Bush-Cheney '04, Inc. Kerry's Campaign has done nothing more than make false accusations and then offer the mere reporting of those accusations as support for its complaint.

The Kerry Campaign's allegation that the SBVT's ads were created, produced and distributed at the suggestion of the Bush Campaign is preposterous. As evidence of this violation the Kerry Campaign points to a quotation from a joint press release issued by the Republican National Committee ("RNC") and the Bush Campaign commenting on the Commission's May 13, 2004 decision to exclude "527" organizations from the definition of Federal Political Committees. In this regard, the press release cited by the Kerry Campaign [See Attachment C, *Joint Statement by Bush-Cheney Campaign Chairman Marc Racicot and RNC Chairman Ed Gillespie on Today's FEC Ruling on 527 Groups*, May 13, 2004.] states that the Commission gave the "green light" to "all non-federal '527's" to forge full steam ahead in their efforts to affect the outcome of this year's Federal elections."

The press release the Kerry Campaign cites, however, is a criticism of the Commission's failure to regulate "527" organizations as political committees, not an invitation for those "527" groups to produce ads. This sentiment can not be overlooked

when reading the press release in its entirety. Specifically, the press release states "Today's decision to delay addressing the fundamental questions regarding the regulations of '527's' is irresponsible." In addition, the press release closely mirrors Commissioner Toner's prediction that "The election of 2004 is going to be the Wild West" considering that the Commission's failure to regulate will cause a "...dramatic escalation of soft-money spending by organizations." As the press release speaks generally about the Commission's actions and refrains from speaking directly to any specific individual or organization, the allegation that the Bush Campaign somehow directed its comments to SBVT is unfounded. The mere characterization of an action taken by the Commission in a press release does not constitute evidence that an expenditure was made at the "request or suggestion" of a candidate or his agent, as required by 2 U.S.C. §441a(a)(7)(B)(i) and 11 C.F.R. 109.21(d) (2004).

Equally spurious is the Kerry Campaign's allegation that, although he did not speak directly to SBVT, President Bush nonetheless endorsed them when he suggested that all "527" and other independent organizations remove their ads from the airwaves. President Bush has said time and time again that he favors banning all "527" organizations. In fact, in an effort to demonstrate his opposition to these groups, the President instructed the Bush Campaign to file suit against the Commission to force it to fulfill its congressionally mandated duty to promulgate clarifying regulations for "527" organizations. Pursuant to President Bush's instruction, the Bush Campaign filed a suit in the District court for the District of Columbia on September 17, 2004. [See Attachment D, *Bush-Cheney, '04 Inc. v. FEC*, Case No. 04-1612 (filed D.D.C. Sept. 17, 2004).] The Kerry Campaign's suggestion that the President somehow endorsed SBVT's efforts by not singling them out when expressing his disfavor of all "527" organizations simply makes no sense. In addition, it would appear that if the Kerry Campaign was sincere in its condemnation of "527" organizations, it would have joined the Bush Campaign's suit against the Commission.

The Kerry Campaign also takes a Bush Campaign strategist's comment out of context in a vain attempt to further its weak allegation of a link between SBVT and the Bush Campaign. Specifically, the Kerry Campaign ineffectively references the following statement in an effort to "prove" coordination between SBVT and the Bush Campaign: "We have a group, the Swift Boat Veterans, that have spent about \$200,000." The context surrounding the above-referenced statement is as follows:

"We are all for every one of these 527s and independent groups taking their spots off the air. We have a group, the Swift Boat Veterans, that have spent about \$200,000. We've had \$50 million spent against us by the folks that are Kerry's allies in this campaign. We'd be happy [if] all of them [were] banned and [if] all of them [were to] take their ads off the air, but the Kerry campaign doesn't seem to want to join us in that."

"Again, we'd be happy for all the ads to be off the air. This is an independent group that --we have First Amendment in this country. These are people that served in Vietnam. Some of these officers served alongside Senator

Kerry. They have a right to – as anybody, to bring up what they believe. We don't have a say-so in whether or not they run these ads or not." [See Attachment E, *Matthew Dowd, Tad Devine and Nina Easton Discuss the Presidential Race*, CBS FACE THE NATION, Aug. 15, 2004.]

It is clear that Mr. Dowd's statement and follow-up statement was not intended to reflect ownership or control over SBVT, or coordination as defined in Commission regulations, but instead was merely meant to draw a distinction between those "527" organizations that support the Kerry Campaign and those that oppose it.

The Kerry Campaign also alleges that an "...intricate network of money and strategy..." exists between the Bush Campaign, the RNC and SBVT. As evidence, the Kerry Campaign simply points to the fact that some individuals have donated to Republican causes, including the Bush Campaign and SBVT and that some of these donors have personal relationships with advisors to the Bush Campaign. The mere fact that these entities are supported by a few of the same donors and that some donors have personal and/or old commercial relationships with Bush Campaign advisors does not even approach the definition of coordination in Commission regulations or imply any other wrong doing. The complaint fails to offer any evidence of coordination as defined in Commission regulations and therefore simply makes another hollow allegation.

In an attempt to further prove that the Bush Campaign illegally coordinated with SBVT and thereby received an illegal contribution, the Kerry Campaign alleges that a Bush Campaign office in Allachua County, Florida distributed a flyer advertising an upcoming rally with SBVT. The Kerry Campaign further alleges that the advertisement referenced several groups that would be in attendance including SBVT and Veterans for Bush. First and foremost, the Bush Campaign denies having held or authorized any such event with SBVT and further denies authorizing or distributing such a flyer. Second, the Bush Campaign saw the flyer for the first time after its existence was reported by the media. Third, Bush-Cheney '04, Inc. has never even maintained an office in Allachua County, Florida. To the extent to which any veterans who are supporters of the Bush Campaign attended any such rally, they did so without the authorization or encouragement of the Bush Campaign and only in their capacities as individuals and not as Bush Campaign representatives. In fact, Mike Bradley, a Vietnam veteran who helped organize the rally in question, was quoted in an August 20, 2004 article as saying, "the rally 'started over a couple of beers at the VFW' by a ragtag group of veterans and had no connection to the Bush campaign." [See Attachment F, *Ken Thomas, Democrats say GOP Backs Gainesville Anti-Kerry Rally; GOP Denies*, AP WIRE, Aug. 20, 2004.] Considering the above, it is clear that the flyer wasn't approved nor was it distributed by the Bush Campaign. Additionally, by virtue of the fact that the veterans who attended the rally were acting in their individual capacity and weren't authorized by the Bush Campaign to attend the rally, the Bush Campaign did not coordinate its activities with SBVT.

The Kerry Campaign offers volunteer Kenneth Cordier's activities with the Bush Campaign and SBVT as evidence supporting their allegation of illegal coordination. In

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this regard, the Kerry Campaign alleges that Mr. Cordier's volunteer activities is a *per se* violation of the Act. First and foremost, Mr. Cordier was never a policy advisor to the Bush Campaign and the Kerry Campaign grossly overestimates Mr. Cordier's role with the Bush Campaign. As an honorary steering committee member, Mr. Cordier did not have access to campaign strategy, "...plans, projects, activities, or needs" that were not otherwise publicly available. See 11 CFR §109.21(d)(3) (2004). To be clear, Mr. Cordier did not have access to non-public campaign information. If by its claim that Mr. Cordier's activities were a *per se* violation of the Act, the Kerry Campaign is referring to the regulations covering former employees or independent contractors under 11 CFR §109.21(d)(5), Mr. Cordier was neither. Moreover, the Bush Campaign was not aware of Mr. Cordier's involvement with SBVT. Although Mr. Cordier's involvement with the SBVT and the Bush Campaign did not rise to the level of "coordination," the Bush Campaign nonetheless terminated relations with Mr. Cordier as soon as it confirmed the relevant facts in order to exercise an abundance of caution and avoid *any* appearance of coordination or impropriety. [See Attachment G, *Statement by Bush-Cheney '04*, Aug. 21, 2004.] The Kerry Campaign's allegation that the Bush Campaign's dealings with Mr. Cordier were in any way improper or that Mr. Cordier's volunteer activities rose to the level of coordination under the Act or Commission regulations is preposterous.

Conclusion

The Parties have acted conscientiously in implementing a thorough and guarded set of procedures to prevent illegal coordination. The Bush Campaign has taken every precaution to assure that its actions remain above reproach. The Bush Campaign has given detailed instructions to its employees, agents, volunteers and all vendors about preventing illegal coordination and other impermissible activity and has taken appropriate steps when necessary to deal with situations that diverge from its standard procedures. There is no basis to believe that a violation of the Act has occurred and no basis for these unfounded accusations to advance.

For the foregoing reasons, Bush-Cheney '04, Inc. respectfully requests that the Commission dismiss the Kerry Campaign's complaint with regard to the Parties. Thank you.

Very truly yours,



Thomas Josefiak
General Counsel

APPENDIX

- Attachment A: *Battle Over Kerry's Vietnam Service*, HANNITY & COLMES, Aug. 19, 2004.
- Attachment B: *Swift Boat Battle*, CNN INSIDE POLITICS, Aug. 20, 2004.
- Attachment C: *Joint Statement by Bush-Cheney Campaign Chairman Marc Racicot and RNC Chairman Ed Gillespie on Today's FEC Ruling on 527 Groups*, May 13, 2004.
- Attachment D: *Bush-Cheney, '04 Inc. v. FEC*, Case No. 04-1612 (filed D.D.C. Sept. 17, 2004).
- Attachment E: *Matthew Dowd, Tad Devine and Nina Easton Discuss the Presidential Race*, CBS FACE THE NATION, Aug. 15, 2004.
- Attachment F: *Ken Thomas, Democrats say GOP Backs Gainesville Anti-Kerry Rally; GOP Denies*, AP WIRE, Aug. 20, 2004.
- Attachment G: *Statement by Bush-Cheney '04*, Aug. 21, 2004.

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STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent

MUR: All MURs Arising from the 2003-2004 Election Cycle

NAME OF COUNSEL: Thomas J. Josefiak

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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

George W. Bush

Print Name

10-21-04

Date

Signature

President

Title

Respondent's Name: President George W. Bush

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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Dick Cheney

Print Name

10-20-04

Date

Dick Cheney

Signature

Vice President

Title

Respondent's Name: Dick Cheney

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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Karl Rove

Print Name

10/18/04

Date



Signature

Title

Respondent's Name: Karl Rove

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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

David Herndon

Print Name

10/21/04 David Herndon Treasurer
Date Signature Title

Respondents' Names: Bush-Cheney '04, Inc.
Bush-Cheney '04 (Primary), Inc.
Buch-Cheney '04 Compliance Committee, Inc.

Address: PO Box 10648
Arlington, VA 22210

Telephone Home: () _____

Business: () _____

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ATTACHMENT A

Copyright 2004 Fox News Network, LLC
Fox News Network

SHOW: FOX HANNITY & COLMES (21:00)

August 19, 2004 Thursday

Transcript # 081902cb.253

SECTION: News; Domestic

LENGTH: 4000 words

HEADLINE: Battle Over Kerry's Vietnam Service

GUESTS: John O'Neill

BYLINE: Sean Hannity, Alan Colmes

BODY:

ALAN COLMES, CO-HOST: Welcome to HANNITY & COLMES. I'm Alan Colmes.

Coming up tonight is the -- this ad an example of subliminal advertising? Some people say yes. And we've seen this kind of thing before. We'll tell you about it.

But first, our top story, and the big story of the day today is Vietnam.

The storm began this morning with a story in "The Washington Post." The newspaper had obtained documents that refute the claims of one of members of the Swift Boat Veterans for Truth in the book "Unfit for Command."

The documents contradict the claims of Larry Thurlow, who we've seen in the swift boat television ad, claiming that Kerry was never under fire during March 13, 1969, during an incident that earned him a Bronze Star.

The storm then grew even stronger when Senator Kerry commented today for the first time on the charges made by the Swift Boat Veterans for Truth.

(BEGIN VIDEO CLIP)

SEN. JOHN KERRY (D-MA), PRESIDENTIAL CANDIDATE: But here's what you really need to know about them. They're funded by hundreds of thousands of dollars from a Republican contributor out of Texas. They're a front for the Bush campaign.

And the fact that the president won't denounce what they're up to tells you everything that you need to know. He wants them to do his dirty work.

(END VIDEO CLIP)

COLMES: The Kerry campaign has also released a television ad responding to some of the charges made about his record in Vietnam. We're going to show you the ad a bit later in the show.

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We also planned on bringing you reaction from the Kerry campaign to the latest developments. After booking someone on the program this morning, the campaign pulled them off late this afternoon.

So joining us now is the man at the center of this controversy, the author of "Unfit for Command," John O'Neill.

Mr. O'Neill, thank you for being with us. Thank you for...

JOHN O'NEILL, AUTHOR, "UNFIT FOR COMMAND": Hi, Sean.

COLMES: This is Alan. As we said before, and I've said to you before, thank you for serving. I think that everybody who serves, in my view is an American hero.

But look, here we have a situation where Larry Thurlow, story in the "Washington Post" today, who swore in an affidavit that he was not under fire, that Kerry was not under fire. And now documents revealed today say exactly the opposite.

How do you respond?

O'NEILL: Yes, I'd like to respond to that, Alan. Larry Thurlow was probably the most decorated officer in our entire unit. The Bronze Star he received was by no means the highest medal he received.

What the "Washington post" article claimed is that a citation that Larry Thurlow received that day made reference to fire in the citation.

It's a citation that Larry Thurlow had never prepared. It's a citation that was prepared, based on a report that John Kerry prepared that day on March 13, an after-action report.

It's interesting because that same "Washington Post" reporter that prepared that, we contacted him on Monday and Tuesday of this week when we had 50 swift boat people here and invited him to talk to the seven or eight people who were involved in the March 13 incident who knew that there was no fire. He declined that invitation.

The other important thing in this article is he admits for the first time that the "no man left behind" story told by Kerry at the Democratic convention is false.

He admits that that of the five boats, Kerry's story being all five boats ran away and then Kerry came back. He admits what really happened is one boat was blown up, three boats stayed with it. Kerry took off, and Kerry simply came back to where the other boats were.

COLMES: That is not Kerry's story. And by the way, you know, the after-action report. John Kerry's camp denies that John Kerry wrote that.

You're claiming that John Kerry wrote those reports. And you're claiming the information revealed by the "Washington Post" are Kerry's words. But that is not being claimed by Kerry or anybody other than the Swift Boat Veterans for Truth, your group.

And there's a district contradiction between what the "Washington Post" unveiled and got as a result of a Freedom of Information Act request and what Thurlow has said. They directly contradict each other.

O'NEILL: Actually, what the article says, is quote, "For much of the episode Kerry was not in a position to know firsthand what was happening on Thurlow's boat, as Kerry's boat had sped down the river after the mine exploded."

So we know now that there was one boat that left the scene of the stricken PCF-3. That was Kerry's boat, and it came back.

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As to whether or not there was fire, here's the state of the information.

On one side, we have the citation prepared a hundred miles away, based on a report that Kerry prepared. How do I know Kerry prepared it? Because anybody reading it with practical knowledge would know that, because each of the boat officers say Kerry prepared it.

More importantly, as to the direct information whether there was fire, here's what we have. We have every other officer on the scene, four of them, four boat commanders. They say there was no fire beyond the original mine. We have three enlisted guys on the scene.

Most importantly we have all the physical evidence. None of this in the "Washington Post" by the way. This is a 75-yard wide creek that these boats are on. They were on this creek rescuing the three-boat for a period of an hour and a half.

Not a single person was wounded after the original mine explosion. There's not a bullet hole in any of those three boats, not one.

HANNITY: John, welcome back to the program. Sean Hannity.

Where did you go to college, by the way?

O'NEILL: I graduated from the United States Naval Academy in the class of 1967.

HANNITY: And you went to school after that and got a law degree, didn't you?

O'NEILL: I graduated from the University of Texas law school, and I stood first in my class.

HANNITY: You were first in your class. OK. And how many years did you serve, a full year in Vietnam, a full tour?

O'NEILL: I actually served that tour, and earlier than that I was on the USS Woodpecker, which operated along the Vietnam waters.

HANNITY: I want to ask you this, and I think this is very important. How many swift boat guys now are a part of your group that are speaking out against John Kerry? How many total?

O'NEILL: Two hundred and fifty-four. They -- of the 23 guys that bunked with John Kerry during the short period he was there on the mother ship, 17 of them have joined our group, the entire chain of command.

HANNITY: And the entire chain of command. Because he talks about his "band of brothers" and Mr. Rassman, who we've had on this program. And -- But that represents how many people that take his side?

O'NEILL: About 12 or 15 as near as we can count, as opposed to 254.

HANNITY: And you have 60 some odd guys. They're not hiding behind spokespeople. These guys that you quote and document in your book are telling their experience, experiences -- these are decorated heroes themselves, correct?

O'NEILL: Let me tell you, Sean, we had them right here in town. We had them right at the Key Bridge Marriott. We begged the "Washington Post" to come out and interview them. And they would not show up and interview them. That's the truth.

HANNITY: Well, now, is there any -- do you have -- because John Kerry is accusing you of being connected to the Bush campaign.

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Now, the **Bush** campaign has said they don't want any of these ads on, including yours. They have been clear on that. And the president has gone on record praising the service of John Kerry and called it honorable.

Do you have any connection to the **Bush** campaign at all?

O'NEILL: Absolutely no connection at all. If John Kerry were running as a Republican, every one of us would be here, all the guys from his unit, exactly the same way. We're here because we believe he's unfit to be commander in chief.

HANNITY: If George **Bush** asked you to stop running these ads would you?

O'NEILL: I'd tell him, "Forget it." It's not a matter of politics to us. It's a matter of very deep personal conviction, based on service in our unit and based on watching him lie about it and his own record later on.

HANNITY: All right. One of the things that bothered me about -- this is about a hundred thousand. They have groups like MoveOn.org. They ran ads that compared George Bush to Hitler.

We have Ted Kennedy, who repeatedly calls the president a liar, a surrogate for, and a spokesman for Kerry.

Let me just run some of the attacks that Kerry's friends have made, just a small amount in the short time we have here.

(BEGIN VIDEO CLIP)

AL GORE (D), FORMER VICE PRESIDENT OF THE UNITED STATES: He has brought deep dishonor to our country, the most dishonest president since Richard M. Nixon.

SEN. EDWARD KENNEDY (D), MASSACHUSETTS: Week after week after week after week we were told lie after lie after lie after lie.

GORE: He betrayed this country.

REV. AL SHARPTON (D), FORMER PRESIDENTIAL CANDIDATE: Why do people lie? Because they're liars. He lied in Florida. He's lied several times and I believe he lied in Iraq.

GEN. WESLEY CLARK (D), FORMER PRESIDENTIAL CANDIDATE: The administration still isn't telling the truth to the American people.

HOWARD DEAN (D), FORMER PRESIDENTIAL CANDIDATE: This president should be ashamed of himself. This president needs to go home to corrupted Texas right now.

(END VIDEO CLIP)

HANNITY: Doesn't include MoveOn.org, Michael Moore, "Fahrenheit 9/11", Terry McAuliffe saying he's AWOL. Do you think there's a double standard in what Kerry is saying today?

O'NEILL: I think it's unbelievable, Sean. MoveOn.org, which I didn't know very much about, is funded by a man named George Soros. They've now spent millions and millions of dollars to try and stop our little organization from putting a few ads on that we've been able to afford.

COLMES: We -- we're going to take a quick break. We'll pick it up right there. More with John O'Neill right after break.

We'll tell you about another one of John Kerry's supporters who has his own Vietnam troubles.

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And then is, is God really supporting John Kerry? This new television ad has the Bush campaign upset. Is this subliminal advertising? We'll debate that.

And later, Amber Frey may not be being cross-examined by the defense when we originally thought. What's going on that nobody wants to talk about? We'll have the latest.

(NEWSBREAK)

(COMMERCIAL BREAK)

HANNITY: You have only 75 days left until Americans go to the polls and make their judgment about John Kerry's war record.

But one of Senator Kerry's biggest supporters may have his own Vietnam issue. Iowa Senator Tom Harkin has been using some downright nasty rhetoric to attack Vice President Cheney on the campaign trail.

(BEGIN VIDEO CLIP)

SEN. TOM HARKIN (D), IOWA: He said we needed a tough policy on these terrorists and we have to go kill them. You know, when I hear this coming from Dick Cheney, who is a coward, who would not serve during the Vietnam War, it makes my blood boil.

(END VIDEO CLIP)

HANNITY: But "The Wall Street Journal" reported in 1991 that Senator Harkin embellished his own Vietnam record, claiming at one point that he flew combat missions over Vietnam and then later admitting that he was stationed in Japan and never flew any air patrol.

So does Senator Harkin and Kerry have some more explaining to do?

We continue now with the author of "Unfit for Command," John O'Neill.

Here's what -- let me look at the big picture here. Because you have George Soros, you have all these guys attacking the president on a regular basis.

Here's one group of veterans and I think you and all of your swift boat veteran allies, you've earned the right, as an American fighting for your country to tell your story.

But Senator Kerry is calling you guys a liar today. Earlier, he had his lawyers and the DNC lawyers trying to intimidate these television stations into not running your ads.

It seems like this is a pattern, though, because he did this in the past. Sixty-four guys on the record in your book. He's insinuating you guys are all liars.

And here's what he said about you guys, the Vietnam vets, when he got back from Vietnam.

(BEGIN VIDEO CLIP)

KERRY: They relived the absolute horror of what this country, in a sense, made them do. They told stories of times that they had personally raped, cut off ears, cut off heads, taped wires from portable telephones to human genitals and turned up the power, cut off limbs, blown up bodies, randomly shot at civilians, razed villages in a fashion reminiscent of Genghis Khan.

(END VIDEO CLIP)

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HANNITY: Trashed vets then. Is he trashing you now? Is there a smear campaign by Kerry and the surrogates now against you?

O'NEILL: That's exactly what's going on. Sean, the book "Unfit for Command," is a very detailed, very factual book. Additional information can be found on SwiftBoats.com. We list all the people that have joined us right there.

Instead of answering, specifically, item by item, the effort is simply, as he did in 1971 to categorize us all as hacks or in some other way.

HANNITY: Let me ask you this question, though. But he admits himself when he got back, he says, "I committed the same kind of atrocities as other vets," he said. Including, and he admits that he burned down villages. Is this a legitimate issue?

I mean, how does someone get medals after admitting to violating the Geneva convention and the Hague conventions, admitting to atrocities and admitting to burning down buildings.

Should that be an issue in this campaign, considering he has basically based his whole campaign on his four-month service in Vietnam?

O'NEILL: Shockingly, Sean, I debated him in 1971, and he said he had never committed any personal atrocities. I heard him say he burned down villages. I didn't really believe it.

As you can tell, looking at this book, there is one horrific incident involving this guy. I never saw anything like that in our unit. I don't think it happened with anybody but him.

But he desperately doesn't want people to read this book or learn the truth, because he's one big paradox. He shifts from purported hero to purported criminal to purported hero to purported criminal, depending on who he's talking to.

COLMES: Mr. O'Neill, it seems like the shifting, in my view, has been along some of the people who are supporting you.

We mentioned what happened with Larry Thurlow. And I still contend, "The Washington Post" directly contradicts statements he has made.

We know, for example, that George Eliot, who has been back and forth and changed his story a couple of times, about how in 1996 he said that John Kerry showed courage, an act of courage winning the Silver Star.

Now he has a different story. He says he only got it because he basically shot himself as all units opened fire and beached directly in front of the enemy. Now I will put on at the screen now the citation signed by the secretary of the navy actually says about that.

It says, "Unhesitatingly, Lieutenant Junior Grad Kerry ordered his boat to attack as all units opened fire and beached directly in front of the enemy ambushers. This daring and courageous tact Awarded to Mr. Eliot says now but as Mr. Eliot did say in 1996.

A number of your people have changed their stories.

O'NEILL: That's just not true. George Eliot is a man devoted to the truth.

In 1996 where there was a charge that Kerry had committed war crimes by shooting a lone Viet Con teenager who was running away, George Eliot came forward, in effect helping Kerry by saying there was no war crime.

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It's ironic that you read that particular part of his citation, because that's exactly what he did not do himself in the Silver Star incident. He didn't go ashore and chase a dozen Viet Con soldiers. That's exactly what didn't happen.

What actually did happen is he went ashore. He faced one lone Viet Con kid. The kid was shot in the legs. He tried to get away, Kerry jumped off and shot him in the back. We've never -- I don't think that was wrong to do that. I might not have done it myself, but I just don't think it's Silver Star material. It's ironic that you read that.

COLMES: I think the public deserves to hear all sides of the story...

O'NEILL: Absolutely.

COLMES: ... and make up their own mind, which is -- So I think you should be here, but I think the other side should be heard, too. And I trust the people to decide.

But the most recent affidavit signed by Eliot, he states, "I do not claim to have personal knowledge as to how Kerry shot the wounded, fleeing Viet Con."

He doesn't have personal knowledge. And you said on this program just last week you never knew John Kerry in Vietnam. The people who knew him best who were on his boat, except for one person, Gardner, support him in his presidential race.

O'NEILL: Actually -- Actually they don't support him on -- they don't claim he went to Cambodia. These fabulous, fantastic lying stories, they don't support most of those.

It is true that some of them support him for president, even a majority. The problem he has is that more than 60 guys have come forward and asked what happened with the Silver Star. There was no doubt about it. He shot one kid in the back. Everybody admits it.

HANNITY: These guys are all on the record, and it's well documented. But we'll let our audience decide as they read your book.

When we come back now, did John Kerry get caught in a lie about throwing his medals away when he really didn't? We'll have more with our interview with the author of this book, which by the way, is now No. 3 on "The New York Times" list -- "New York Times" list, "Unfit for Command."

And then, is the Democratic National Committee, are they using subliminal ads to trick voters into thinking God is backing John Kerry? We'll have the latest on the ad controversy.

Later, will new information in the Scott Peterson murder trial, turn the table for the defense? We'll have the very latest from the courtroom as we continue.

(COMMERCIAL BREAK)

COLMES: Well, a page tonight from the HANNITY & COLMES notebook. New polls from some important swing states mean good news for John Kerry today. And they could mean bad news for the swift boat veterans.

The new Gallup poll has John Kerry leading President Bush in Ohio by a whopping 10 points among registered voters in the must-win state. A brand new Quinnipiac poll has Kerry leading by five points in Pennsylvania, where President Bush was campaigning just the other day.

And a new Republican poll in Wisconsin has Kerry leading President Bush in a tight race by only a point, 74 to 46.

Now, these are important numbers, because Ohio and Wisconsin are states where the Swift Veterans for Truth have been running their television ad.

But it -- it's also where the Kerry campaign will launch this new ad that was released today.

(BEGIN VIDEO CLIP)

KERRY: I'm John Kerry, and I approved this message.

ANNOUNCER: The people attacking John Kerry's war record are funded by Bush's big money supporters. Listen to someone who was there, the man whose life John Kerry saved.

JIM RASSMAN, RESCUED BY JOHN KERRY: It blew me off the boat. All these Viet Con were shooting at me. I expected I'd be shot. When he pulled me out of the river, he risked his life to save mine.

ANNOUNCER: The Navy documented John Kerry's heroism and awarded him the Bronze Star. Today, he still has shrapnel in his leg from his wounds in Vietnam.

(END VIDEO CLIP)

COLMES: We now continue with the author of "Unfit for Command," John O'Neill.

Jim Rassman says that John Kerry risked his life to save his. Does not -- does John Kerry not deserve some kind of valor award for that, and is Jim Rassman telling the truth?

O'NEILL: Jim Rassman originally said that all five boats fled and John Kerry came back and rescued him. But not even the Kerry campaign says that anymore.

They now say that four boats stayed to save the three-boat and that Kerry eventually came back and rescued Rassman shortly before Jack Shuttleworth (ph) did.

As to all these Viet Con all around, there was a single mine and virtually -- well, all of the other officers there and almost all the boat guys say there simply was no firing.

And the physical evidence in a 75-yard wide deal shows exactly the same.

COLMES: So John Kerry didn't risk his life?

O'NEILL: Absolutely not. John Kerry fled. The people who risked their lives were the guys who stayed to save the three-boat and who could have been shot at, had there been heavy fire.

COLMES: But he was there and you were not. He saved Jim Rassman's life. He was there with John Kerry. Wouldn't he be a better authority on this than you?

O'NEILL: Not at all. Jim Rassman was bobbing in the water. Jim Rassman was probably watching the swift boats themselves fire in the first 40 seconds.

The best authorities are the guys who stayed right on the scene. That includes Thurlow and Shennowith (ph), Dick Peas (ph), whose boat was blown up. Other officers on Dick Peas' (ph) boat will...

HANNITY: How many people contradict Rassman's story that you have? How many guys?

O'NEILL: Eight. Eight: four officers and four enlisted, so far. Every one I've called, and they have exactly the same story.

HANNITY: I want to know something else. As a result of your book, the Kerry campaign -- he told a story

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about Christmas in Cambodia. That has been proven. They've had to recant that story.

This issue of "no man left behind," even "The Washington Post" acknowledges you were right.

There's this other issue. He has gone on the record saying he never threw his medals away. He said he threw some of his medals away. Then he said they were somebody else's medals that he threw away. He just threw his ribbons away; ribbons and medals are interchangeable.

But let's listen to what he said in an interview way back then.

(BEGIN VIDEO CLIP)

KERRY: Betty has a picture of one of the many veterans who came to Washington last April and decided that the last resort that they had to try and wake the country up and tell it what was happening in Vietnam as well as what was happening back home to men who were veterans was to renounce the symbols of the -- renounce the symbols which this country gives, which supposedly reinforces all the things they have done. And that was the medals themselves, and so they decided to give them back to their country.

UNIDENTIFIED FEMALE: How many did you give back, John?

KERRY: I gave back, I can't remember, six, seven, eight, nine...

UNIDENTIFIED FEMALE: You were awarded the Bronze Star, the Silver Star and three purple hearts.

KERRY: Right. And among that I gave back others.

(END VIDEO CLIP)

HANNITY: There's 10 other stories about that. It turns out he never gave any back.

O'NEILL: It's exactly right, Sean. It's like him denying that he met with the North Vietnamese and now he admitted he met with them in the spring of 1970 while he was a naval officer.

HANNITY: Here's what we know. He wasn't in Christmas in Cambodia as he claimed. His story about no man left behind is not true. The medal story isn't true. He admits to committing atrocities when he was there and burning down villages.

Isn't the bottom line here you've got 65 guys versus John Kerry on record, and the American people now have to decide?

O'NEILL: The tragic thing, Sean -- truly, Sean, is if he came forward and just simply admitted the truth, apologized for the lies about war crimes, we could then go forward.

But what he's done by attacking all of us, by lying about Vietnam and right up to the Democratic convention, is he's made it worse.

COLMES: Thank you for being with us.

O'NEILL: Thank you very much.

COLMES: The Kerry campaign was set to come on to the program to respond. Late this afternoon they did decide not to appear.

Coming up next, why Republicans so angry that the word "God" appears in the new DNC ad? We're going to have that debate coming up next.

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LOAD-DATE: August 20, 2004

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ATTACHMENT B

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CNN

SHOW: JUDY WOODRUFF'S INSIDE POLITICS 16:00

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HIGHLIGHT:

Veterans on the attack against John Kerry are making it clear once again today they're prepared to fight on despite the senator's personal attempt to discredit them as a front for President Bush.; Interview with Tad Devine.; A new Bush campaign ad takes direct aim at John Kerry's attendance record as a member of the Senate Intelligence Committee.

BODY:

(BEGIN VIDEOTAPE)

SEN. JOHN KERRY (D-MA), PRESIDENTIAL CANDIDATE: They had personally raped, cut off ears, cut off heads...

UNIDENTIFIED MALE: The accusations that John Kerry made against the veterans who served in Vietnam was just devastating.

ANNOUNCER: A new salvo in the fight over John Kerry's Vietnam War record.

UNIDENTIFIED MALE: As a member of the Intelligence Committee, Senator Kerry was absent for 76 percent of the committee's hearings.

ANNOUNCER: A serious charge. Is it true? Releasing the records to settle this matter may not be so easy.

There's more than just the White House up for grabs this November. Can the Democrats retake the Senate from the Republicans? We'll take a closer look at the battle for Congress.

(END VIDEOTAPE)

ANNOUNCER: Now, live from Washington, JUDY WOODRUFF'S INSIDE POLITICS.

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WOLF BLITZER, HOST: Thanks very much for joining us. I'm Wolf **Blitzer**. Judy is off today.

Veterans on the attack against John Kerry are making it clear once again today they're prepared to fight on despite the senator's personal attempt to discredit them as a front for President Bush. The group called **Swift Boat Veterans for Truth** today unveiled a brand-new ad. At the same time, a new poll offers the first measure of how the public is responding to the controversy.

(BEGIN VIDEOTAPE)

KERRY: They have personally raped, cut off ears, cut off heads...

UNIDENTIFIED MALE: The accusations that John Kerry made against the veterans who served in Vietnam was just devastating.

KERRY: ... randomly shot at civilians...

UNIDENTIFIED MALE: And it hurt me more than any physical wounds I had.

BLITZER (voice-over): The new ad by the so-called **Swift Boat Veterans for Truth** gets to the heart of their anger at John Kerry: his 1971 Senate testimony on alleged U.S. war crimes in Vietnam. Veterans who are now critical of Kerry make no bones about the fact that they were outraged by his anti-war activities after returning from Vietnam.

UNIDENTIFIED MALE: He dishonored his country and, more importantly, the people he served with. He just sold them out.

BLITZER: The Kerry campaign is condemning the new ad saying, "This Republican front group for Bush is out of credibility after being caught lie after lie, day after day."

UNIDENTIFIED MALE: You are aware you've been one of the strongest critics of this war for the longest time.

BLITZER: The does not ad include Kerry telling senators that the war crimes charges he outlined were based on the testimony of over 150 Vietnam veterans.

KERRY: Of course, this group isn't interested in the truth. They're not telling the truth.

BLITZER: A day after Kerry personally responded to the **Swift Boat Veterans for Truth**, he did not discuss the controversy, focusing instead on domestic issues. But a new poll may help explain why he decided to fight back. The Annenberg Survey found 57 percent of Americans say they have seen the original **Swift Boat** ad or heard talk about it.

UNIDENTIFIED MALE: John Kerry lied to get his Bronze Star. I know. I was there. I saw what happened.

BLITZER: Those who are aware of the ad are split on whether it's believable. Of all those surveyed, 59 percent say they think Kerry did earn all of his war medals. Twenty-one percent say he did not earn them. Twenty percent are unsure.

KERRY: They're funded by hundreds of thousands of dollars from a Republican contributor out of Texas.

BLITZER: The Kerry camp continues to press its charge that the **Swift Boat Veterans for Truth** is a front for the Bush campaign. "The New York Times" today reports what it describes as a web of connections between the group behind the ad and the Bush family: high-profile Texas political figures and the president's top political strategist, Karl Rove.

Apparently, picking up on that, the Kerry camp today charged, "Karl Rove's attack squad of convincing the Swift Boat Veterans to lie." The Swift Boat group denies any direct contact with the RNC, the Bush White House or any Republican group.

LARRY THURLOW, VIETNAM VET: I've had absolutely no contact with any of them, nor do I plan to, nor can they tell me not to take part in the Swift Boat group's campaign.

(END VIDEOTAPE)

BLITZER: And the Swift Boat Veterans for Truth say their new ad will air beginning Tuesday in three states. They've not yet chosen which those -- which of those states be included. They say they will have a budget of around \$600,000 to pay for those ads.

The Bush White House says it is not involved with the Swift Boat ads in any way and suggests John Kerry is simply overreacting. CNN's Jill Dougherty is covering the president. She's joining us now live from Crawford, Texas.

What's the latest from there, Jill?

JILL DOUGHERTY, CNN CORRESPONDENT: Well, Wolf, you said overreacting, but what the operative phrase from the White House today was Senator Kerry is "losing his cool" over this issue. It came from Scott McClellan, who gave a briefing to reporters. And, actually, he was responding to a question from reporters about that "New York Times" story that alleges this web of connections between the people involved in the ads and the Bush family, Texas people, and Karl Rove.

So he immediately said, no, there is no connection, categorically, as the campaign says, between them. But then he went after Senator Kerry.

(BEGIN VIDEO CLIP)

SCOTT MCCLELLAN, WHITE HOUSE PRESS SECRETARY: We've already said we weren't involved in any way in these ads. We've made that clear.

I do think that Senator Kerry losing his cool should not be an excuse for him to lash out at the president with false and baseless attacks. I mean, where has the Kerry campaign been for the last year while more than \$62 million in funding through these shadowy groups have been used to negatively attack the president?

(END VIDEO CLIP)

DOUGHERTY: So the presidential spokesman said that Senator Kerry has been noticeably silent, as he put it, on these attack ads, and said the campaign is actually fueling more of these ads. And then, as they've said before, Wolf, he said, look, we could end this today if Senator Kerry would join the president and say let's just stop all these ads.

BLITZER: Jill Dougherty reporting for us from Crawford, Texas. Thanks, Jill, very much.

Let's go now to the John Kerry campaign. I'm joined live by campaign senior strategist Tad Devine.

Tad, thanks very much for joining us. Where's the hard evidence directly linking the Bush White House or the Bush-Cheney campaign to these ads as alleged yesterday by John Kerry?

TAD DEVINE, SR. STRATEGIST KERRY CAMPAIGN: Well, Wolf, it's in "The New York Times" today. There's a big chart. You know, you can take a look at it. OK?

The connections, the web of connections between this effort and the campaign are obvious for anyone to

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see. And, by the way, Wolf, this is part of pattern.

This is what George Bush does. He did it precisely against John McCain. They have others front for them, do their dirty work for them. They stand there and do nothing. And for the president of the United States to stand there and say nothing about this is reprehensible.

BLITZER: Well, I read the entire "New York Times" article and our viewers did. In fact, I spoke earlier today with one of the reporters who wrote the article. They don't have any hard evidence backing it up.

They have a web of connections, as you say, but there's nothing specific...

DEVINE: Sure.

BLITZER: ... because if there were, they would be breaking the law. There's a -- there's a campaign fund-raising violation that would clearly be violated. Give me the specific, name names. Who is doing this?

DEVINE: Wolf, it's obvious for everyone to see. These are Texas fund-raisers, it's precisely what happened to John McCain four years ago. They've got a web of connections between them and the Bush campaign.

They take these people. Once removed from the campaign -- and obviously they're doing it deliberately that way. They do not want the legal connections between the campaign, they're once removed from the campaign. Every time we look closer and closer at this, this is what we discover...

BLITZER: All right.

DEVINE: ... the connections between the campaign and the lies and distortions at the heart of the Swift Boat Veterans.

BLITZER: All right. So let me repeat the question. Name some names, the connections between the campaign or the White House, on the one hand, and these Swift Boat Veterans, those who are funding these ads on the other. Go ahead. Connect the dots.

DEVINE: Well, Wolf -- Wolf, I don't know how it can be anymore explicitly clear than it is in the chart in today's "New York Times." I mean, it's laid out person by person, the connections between Karl Rove and the major fund-raisers, the connection between the people making these ads, the long history of connections between them and George Bush and president -- the previous President Bush, the president's father.

These connections go back years and years. It's the same tangled web of people who tried to do this to John McCain four years ago. But let me tell you something. It's not going to happen to John Kerry.

John Kerry will fight back. He's -- and he's going to challenge the president as John McCain challenged the president, to stand up, to denounce these ads. And every day that goes by that the president fails to denounce these ads just demonstrates his complicity in these efforts.

BLITZER: All right. So I've heard one name, Karl Rove. Are you saying Karl Rove coordinated with the Swift Boat for Veterans -- that the Swift Boat Veterans for Truth coordinated this ad campaign? Is that the allegation?

DEVINE: Well, Wolf, to demonstrate this, we'd have to go to court, we'd have to depose people, we'd have to put them under oath, we'd have to subject them to all the process of a legal examination. I think the facts are obvious here. It's for everyone to see.

A bunch of rich guys from Texas with long connections to the Bush campaign come out and try to destroy a veteran of the Vietnam War. It happened twice. They did it once in 2000; they're trying to do it again in 2004. The only difference is it's not going to succeed this time. That's the big difference.

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BLITZER: Let me throw it this way to you.

DEVINE: Sure.

BLITZER: There are a bunch of rich Democrats out there, a bunch of active Democratic activists out there who are involved in all sorts of 527 independent ad campaigns smearing the president of the United States and the vice president right now. Because they have a long history working with other Democrats, with Kerry supporters and strategists, does it make them in violation of the law as well?

DEVINE: Wolf, when John McCain challenged Senator Kerry days ago to denounce an ad attacking the president's lack of service in the National Guard, within hours Senator Kerry spoke up publicly and denounced the ad. It's so different from what this president is doing.

This president is attempting to put out this group do his dirty work for him, and that's because the president cannot talk about economy, health care, energy independence, or how he's going to defend the nation, particularly his failure in Iraq. This is a deliberate effort on their part to distract the voters' attention away from the failures of George Bush's administration.

BLITZER: Are you going to file a complaint with the Federal Election Commission?

DEVINE: Wolf, listen, they're trying to tie us up in legal process, trying to distract this campaign and the American people from the real issues. I'll tell you what we're going to do.

We're going to continue to talk about John Edwards and John Kerry's plan to make America stronger at home and respected in the world. We're going to do that every day. And at times we will hold them up to the light of day. And when they are exposed, as they have been recently in the mainstream press, they will see they are liars and bigots. And the more of that scrutiny on this group the better for us.

BLITZER: Why did John Kerry wait so long to respond this **Swift Boat Veterans for Truth**?

DEVINE: Well, Wolf, because, obviously, when we respond it's going to be launched on to a broad national stage. And that's a tactical decision you have to make in campaigns. But the lies had built up to such an extent we decided to talk about it.

He felt very strongly himself that this needed to be answered. He wrote the answer himself, he delivered it powerfully in Boston the other day.

Now, he's not going to spend all of his time talking about this because he is determined to change the course of this nation. But we will point, and I think rightfully so, that this president, George W. Bush, is behind this attack, is complicit in it, and is failing to live up to his responsibility as commander-in-chief to stand up and defend a decorated war veteran, John Kerry.

BLITZER: Yesterday, the Democratic nominee challenged President Bush and said if he wants to have a debate over their service during the Vietnam War, he had a very strong challenge to him. I want you to listen to what John Kerry said -- well, actually, we don't have that sound bite.

DEVINE: Just bring it on.

BLITZER: But he just basically said -- he said, "Bring it on." What is the point? What was John Kerry saying about the president of the United States and his service in the Texas Air National Guard?

DEVINE: Well, Wolf, I think what he was saying was "our" service, and I believe who he was referring to was himself and the crewmates he served with. Everyone, Wolf, who has seen any of these episodes has offered first-person testimony to what happened.

People like John O'Neill, who wrote this book, weren't even there. People like his co-author, who's been

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exposed as an anti-Catholic, anti-Semitic bigot, weren't even in Vietnam. So John Kerry was talking -- when he said "our" service, he was referring to himself and his crewmates, not to the president.

BLITZER: But was he smearing the president because the president didn't volunteer to go to Vietnam?

DEVINE: No, he was not smearing the president. He was talking about "our" service, himself and his crewmates, the people who actually saw the heroism that resulted in John Kerry winning a Silver Star, a Bronze Star and three Purple Hearts. Those events happened.

And you know, Wolf, lies can be powerful. And these guys have demonstrated that. But the truth is even more powerful. And as the American people find out the truth, that these are distortion and lies about John Kerry, and that George Bush is behind it, the president will pay a heavy price.

BLITZER: Tad Devine from the Kerry campaign. Thanks very much for joining us.

DEVINE: Thank you.

BLITZER: And this note to our viewers. Later on this program we'll get some Republican reaction to the Swift Boat controversy. I'll speak with the Bush campaign chairman, the former governor, Marc Racicot.

The Kerry campaign is getting flak on more than one front today. Coming up, John Kerry's attendance record on the Senate Intelligence Committee. Should the records be released?

Plus, the Senate Intelligence Committee chairman on the records flap (ph), and his disagreements with the president and some other fellow Republicans.

And later, can playing the hero merit the "Political Play of the Week?"

With 74 days until the election, this is INSIDE POLITICS, the place for campaign news.

(COMMERCIAL BREAK)

BLITZER: Welcome back. A new Bush campaign ad takes direct aim at John Kerry's attendance record as a member of the Senate Intelligence Committee. Our congressional correspondent, Ed Henry, reports on the debate, over-attendance, and explains how this issue could entangle members of both parties.

(BEGIN VIDEOTAPE)

ED HENRY, CNN CONGRESSIONAL CORRESPONDENT (voice-over): Senators Kerry and Edwards, who have touted their service on the Intelligence Committee, are under fire for skipping many of the panel's public sessions.

UNIDENTIFIED MALE: Senator Kerry was absent for 76 percent of the committee's hearings.

HENRY: Democrats say that number is skewed. It does not include the hundreds of private and classified meetings held during Kerry's tenure on the panel from 1993 through 2000. So Republicans have called Kerry's bluff, demanding that he and Edwards ask the committee to release the classified portion of their attendance figures to see how many of those sessions they attended.

SEN. PAT ROBERTS (R), INTELLIGENCE CHAIRMAN: All John Kerry has to do and all that John Edwards has to do is write us or pick up the phone and call me, say, "Hey Pat, hey Jay, hey Senator Rockefeller, hey Senator Roberts, please release my records, and not only the public records, but the closed records." And then the matter is over.

HENRY: Chairman Roberts said committee rules allow him and vice chair Jay Rockefeller to decide whether to release the records. But Democrats insist such a precedent-setting move would trigger a vote in

the Intelligence Committee. That could be a slippery slope because senators in both parties routinely miss public hearings and private meetings.

Democrats privately warn they will push to release the attendance of every senator during the time Kerry and Edwards served on the committee. Democrats insist the Republicans would never go for that because both parties would be embarrassed. Bush campaign officials say Democrats are committing a smoke screen and Kerry and Edwards should be held to a higher standard than other senators because they are running for higher office.

ROBERTS: You have both candidates saying this: because of our intelligence background on the committee, more especially John Edwards, who has indicated it wouldn't have take us three years to make the changes after 9/11 that we need to make, well, Senator Edwards made a decision to run for vice president.

HENRY: By that standard, Democrats say Vice President Cheney's tenure on the House Intelligence Committee is fair game. They say Cheney attend only one of the seven public hearings the committee held from 1985 through 1989. Cheney's tenure was before 9/11, but so was Kerry's.

REP. JANE HARMAN (D), INTELLIGENCE VICE CHAIR: I don't believe that Senator Kerry has been a member of the Senate Intelligence Committee since 2000. And I think the ad is somewhat misleading.

It implies that he -- he has been and that he was AWOL. If he missed some hearings in the '90s, that's a fair issue. But that does not apply to post-9/11.

(END VIDEOTAPE)

HENRY: Wolf, I just got off the phone with the Bush-Cheney campaign. They insist that the Democrats' numbers are wrong, that Vice President Cheney only missed one hearing in the 1980s of the House Intelligence Committee.

They say this has been concocted out of (UNINTELLIGIBLE). Bush-Cheney spokesman Steve Schmidt says that the Democrats are on the run because John Kerry is on the defensive about this. They say that the campaign is just trying to have a distraction here.

And what Steve Schmidt is saying is that, bottom line, John Kerry has to make a phone call to Chairman Pat Roberts and say, "Turn those records over, release them." But I can tell you, I've been talking to a lot of people close to John Kerry. They say he has no intention of making that phone call -- Wolf.

BLITZER: Now, isn't it a fundamental fact -- and you and I have covered Capitol Hill for a long time -- that if they start going down this slippery slope about absenteeism, which senators or members of the House actually go to committee hearings, public ones or private ones, there's going to be a lot of embarrassment on the Republican and Democratic side?

HENRY: Absolutely, because senators are on three, four committees, sometimes. They're juggling meetings, all their schedules are busy. They're fund-raising, they're doing a lot of things in addition to official business. But I can tell you, the Republicans feel very confident here that their numbers are going to be better, and they also feel that they do have the Kerry campaign on the run.

When you talk to political analysts out there, they say that John Kerry is trying to make intelligence a key part of his campaign. This puts him on the defensive. But they also say that if he's not showing up for these hearings, that's going to also look like since he's not releasing the records he's hiding something -- Wolf.

BLITZER: I guess one of the down sides of having two sitting senators on the same ticket, a lot of voting records, a lot of attendance records that can be reviewed.

HENRY: Absolutely.

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BLITZER: Ed Henry, thanks very much for that good report.

And hopefully here on INSIDE POLITICS today we'll speak with the chairman of the Senate Intelligence Committee, Pat Roberts of Kansas. We expect to speak with him at some point, get his assessment on what's going on.

Natural disasters can put a big, big wrinkle in planning for a major election. Coming up, how Florida's election machine is coping with the aftermath of Hurricane Charley.

(COMMERCIAL BREAK)

BLITZER: Yet another response today to veterans' attacks on John Kerry. This time in a new ad by the Democratic National Committee.

The spot features retired General and former Air Force Chief of Staff Tony McPeak. After endorsing George W. Bush four years ago, McPeak says he's supporting Kerry this year because he has -- and I'm quoting now -- "the strength and common sense we need in a commander-in-chief." The ad is part of a \$7 million ad buy in battleground states.

Florida Governor Jeb Bush has declared an elections emergency in counties hit hard last week by Hurricane Charley. The governor's declaration allows local officials to delay early voting and it gives them more time to hire and train poll workers.

Florida's primary is less than two weeks away, on August 31st. Bush and the secretary of state have indicated the primary will be held as scheduled, even if people have to vote inside tents and generators are used for power.

More in our next half-hour from Florida on Charley's aftermath. But coming up right after the break, John Kerry touches down for a first-hand look at the Hurricane's handiwork.

Later, the Senate scramble. We'll take a closer look at this November's key races.

(COMMERCIAL BREAK)

(BEGIN VIDEOTAPE)

ANNOUNCER: A new blast at John Kerry's Vietnam War records.

KERRY: Crimes committed on day-to-day basis...

UNIDENTIFIED MALE: He betrayed us in the past. How could we be loyal to him now?

ANNOUNCER: Are the attacks hurting Kerry's bid for the White House?

The fight for the showdown states. We've got new polls in two crucial states that could decide the election.

It's Friday, and that means the "Play of the Week." Stick around. Bill Schneider will reveal the winner.

(END VIDEOTAPE)

ANNOUNCER: Now, live from Washington, JUDY WOODRUFF'S INSIDE POLITICS.

BLITZER: Welcome back. I'm Wolf Blitzer, sitting in today for Judy.

John Kerry is in Florida this hour, touring damage from Hurricane Charley. At the same time, his campaign

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continues to do damage control over ads attacking his war record in Vietnam and his antiwar activities after returning home. CNN's Dan Lothian is traveling with John Kerry.

(BEGIN VIDEOTAPE)

DAN LOTHIAN, CNN CORRESPONDENT (voice-over): Even as the anti- Kerry group **Swift Boat Veterans for Truth** prepare to roll out another ad critical of the senator's Vietnam War rhetoric...

UNIDENTIFIED MALE: He betrayed us in the past. How could we be loyal to him now?

LOTHIAN: ... Kerry tried to refocus his campaign on domestic issues important to voters.

UNIDENTIFIED MALE: I was furloughed in December of 2002, and that's when I started looking for retraining.

LOTHIAN: Meeting with laid-off workers being retrained at a Charlotte, North Carolina, community college...

UNIDENTIFIED MALE: John Kerry!

LOTHIAN: ... and later, with more than 700 others gathered at the school, Kerry touted his economic plan which he says will restore prosperity to every American.

KERRY: We're just going to go back to where we were with Bill Clinton, when people got rich and the country did well.

LOTHIAN: His plan? To end tax breaks for companies that ship jobs overseas and to enforce trade agreements. But recognizing the forces of economic trends, Kerry told the crowd he won't promise what he can't deliver.

KERRY: One thing I know people all across this country want more than anything else is leadership that looks them in the eye and tells the truth.

(END VIDEOTAPE)

LOTHIAN: The Kerry campaign says that the senator will continue to vigorously defend his record. Now, as for the new ads, campaign aides say that you can just take a look at the credibility that's being lost by the groups behind the ads, they say they've just been telling, quote, "lie after lie day after day."

Now Senator Kerry as you mentioned, Wolf, is here in Florida touring the devastated areas hit by Hurricane Charley last week. The campaign was expected to come here on a campaign stop just before the hurricane slammed into Florida and decided to put off that campaign trip here feeling that it would be a distraction and decided to come now at the invitation of Senator Bill Nelson -- Wolf.

BLITZER: And, Dan, on this day after he went on the offensive on the Swiftboat Veterans For Truth he made no mention whatsoever of this controversy today?

LOTHIAN: That is correct, Wolf. No mention of that. You're correct. Yesterday, he did come out aggressively, tried to defend his war record. Today, no mention of that, instead, tried to stay on message. And as I mentioned, his campaign saying that he will continue in the future to vigorously defend his war record -- Wolf.

BLITZER: CNN's Dan Lothian covering John Kerry today in Florida. Thanks, Dan, very much.

We're getting somewhat of a better idea now of how the Swiftboat controversy may be affecting the White House thanks to some brand new poll numbers. Let's bring in our senior political analyst Bill Schneider.

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Bill, what are the poll numbers showing right now, as far as whether they believe the Swiftboat Veterans as part of these ads or they believe John Kerry?

WILLIAM SCHNEIDER, CNN SR. POLITICAL ANALYST: Well, the Annenberg Center of the University of Pennsylvania, the Annenberg School did a poll in which asked people who had seen or heard about the ad, that's a majority of Americans, because the ad has been shown and talked about so much on radio and television, do you find the charges believable? Do you find the ad believable?

The answer is they're split down the middle. About half, 46 percent say they find the ad very or somewhat believable and about half, 49 percent say they find it very or somewhat unbelievable. As you'd expect, Republicans say they find it believable, Democrats don't but Independents who are the people who come at this without any predispositions are split right down the middle.

BLITZER: So how is it impacting the horse race, if it is at all?

SCHNEIDER: Well, here's what we know. There is a CBS News poll just out which shows there has been a slight shift since the period right after the Democratic convention. Immediately after the convention the race stood at 48 percent for John Kerry, 43 percent for Bush. Now, the race is virtually a tie. 46 Kerry, 45 Bush.

What that indicates is about a two-point shift, not very big but a two-point shift among voters from Kerry to Bush. Does this have anything to do with the ads? Well, what they found in that CBS News poll is that the biggest shift came among veterans. They're only 16 percent of the voters, so they're not a big group. But take a look. After the Democratic convention, veterans were tied, 46 Kerry, 46 Bush. Now, veterans are 55 percent for Bush, 37 percent for Kerry. Notice that there is a nine-point shift among veterans from Kerry to Bush. The suggestion is, at least the possibility is there that the Swiftboat ad angered a lot of veterans.

BLITZER: I thought after the Michael Dukakis blunder of '88, when he refused to respond to the attacks against him and waited and waited and waited, the Democrats had learned from that experience, which raises a question, why did John Kerry wait so long, more than a week, two weeks to actually respond to these attacks?

SCHNEIDER: He is responding right now and he's responding forcefully and in person. This CBS News poll was taken just before we heard from Senator Kerry and indicated damage has been done. I think probably, this is only a guess but Kerry waited to see if the ad was doing any damage, if anyone found it believable. He found that there was some damage there and then he spoke out, learning the lesson from Michael Dukakis not to let these charges lie there.

BLITZER: I guess you can't wait very long. Whenever you're attacked you have to attack right back. Bill Schneider will be back later on *INSIDE POLITICS* with his political play of the week. Can't wait to hear what it is. Thanks very much, Bill, for that.

And we'll also get the Republican take on the Swiftboat controversy. In just a moment I'll speak live with Bush/Cheney chairman Marc Racicot. I'll have much more on the story as well coming up including a debate on "WOLF BLITZER REPORTS." That starts 5:00 p.m., 2:00 Pacific. Plus I'll also live with the speaker of the House of Representatives, Dennis Hastert. We'll talk politics among other things at that time.

Checking on some of our headlines on our Friday edition of "Campaign News Daily." We have two new presidential polls to report from two separate showdown states. In Michigan, John Kerry holds a three-point edge over George W. Bush, 49 to 46 percent according to a survey by the American Research Group. ARG polled likely voters in New Mexico as well in a head-to-head match up there, Kerry leads with, get this, 10 points, 52 percent to 42 percent.

In the Pacific northwest about 150,000 people are expected to attend this weekend's Seattle hemp fest in support of legalizing marijuana. Organizers tell the "Boston Globe" they're encouraging supporters to back John Kerry for president citing Bush's tough stand against medical marijuana and other issues. Kerry camp

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volunteers are expected to staff a booth at the event along with voter registration groups like the League of Women Voters.

Democrats here in Washington today kicked off what they're calling the "America Can Do Better" bus tour. Senator Tom Harkin was among those announcing the 15-city tour which starts Monday and ends in New York City on the eve of the Republican convention. The bus will make stops in several battleground states where national and local party leaders will speak out on behalf of the Kerry-Edwards ticket.

Another anti-Kerry ad featuring fellow Vietnam vets. Up next, I'll speak with Bush campaign chairman Marc Racicot about the race for the White House and the latest back-and-forth over third party ads.

And assessing the balance of power on Capitol Hill. Stu Rothenberg updates us on the battle for control of the U.S. Senate.

And later, lots of sightseeing and low cost prescription drugs. How Britain plays a role in the political play of the week.

(COMMERCIAL BREAK)

BLITZER: Today's release of another anti-John Kerry ad from the group Swiftboat Veterans For Truth has renewed the controversy over attack ads. Kerry accuses President Bush of allowing so-called front groups to do his dirty work, that's a direct quote, while he remains silent. Joining us now from Arlington, Virginia, to answer John Kerry's charge, Governor Marc Racicot, the former governor of Montana, the current chairman of the Bush-Cheney campaign. First of all, Governor, thanks for joining us.

What is your connection, the Bush-Cheney campaign, with this group Swiftboat Veterans For Truth?

MARC RACICOT, BUSH-CHENEY CAMPAIGN CHAIRMAN: Absolutely nothing, nada (ph), no connection. There's no connection of any kind whatsoever.

BLITZER: All right so you're saying flatly that no one from the Bush-Cheney campaign has spoken or done anything to support the release of these ads, encouraged some of these big Texas contributors who are providing hundreds of thousands of dollars to get these ads on the air?

RACICOT: I don't know how many times we have to say it, there is no connection between the Bush campaign and these ads or that group, absolutely none. It would be a crime, as you pointed out in your previous segment, to coordinate that kind of an effort. It would be a federal crime. So quite obviously, it's a very serious matter.

BLITZER: What about this suggestion and you heard Tad Devine make it earlier from the Kerry campaign that Karl Rove, the president's top political strategist has a longstanding relationship with this Texas millionaire, Bob Perry who is providing a big chunk of the money for these ads.

RACICOT: Well, I think that they've come completely unhinged. Senator Kerry -- Tad, although I've certainly had time to grow to like him on occasion, he looks to me to be wild-eyed making accusations that have absolutely no basis in fact at all. And quite frankly it's incredibly irresponsible for those kinds of allegations to be made by both Senator Kerry and the members of his campaign. The kind of speculation, the kind of things that they're doing and suggesting expressly as well as by innuendo are completely out of bounds.

BLITZER: Well, what they're clearly suggesting is while there may not necessarily be a smoking gun, there's a wink and a nod, there's a lot of informal alliances, if you will, between those supporting these ads and either the White House or the Bush-Cheney campaign.

RACICOT: Well, as you pointed out, Wolf, although you didn't supply some of the details, there has been in excess of \$60 million spent by 527 groups against the president trying to defeat the president. Known

Democratic contributors. And as you asked Mr. Devine, does that mean that each of them should be indicted because they're known contributors? Because they support Senator Kerry?

We've never made that allegation. What we've said is, what the president has said is, Senator Kerry, why don't we join together here and make certain that all of these 527 ads are eliminated from the process, these unregulated soft dollar ads. And you know what, Senator Kerry hasn't had one word to say about \$60 million being spent (UNINTELLIGIBLE) attacking the president for everything from condoning torture to poisoning pregnant women. And of course we still want to proceed in that direction responsibly to remove that kind of third party advertising from this campaign.

BLITZER: Senator John McCain who himself was a P.O.W. in Vietnam has specifically said these ads, these Swiftboat Veterans For Truth ads are dishonorable, dishonest and he has asked the president to disassociate himself from that, to repudiate these specific ads. Why won't the president do that?

RACICOT: The president has disassociated himself from all 527 ads...

BLITZER: I know that but why won't he specifically say that these ads are scurrilous?

RACICOT: Wolf, the answer to the question is look, all of the 527 ads that are being run, this president has called for a halt to. He's asked Senator Kerry to join in that effort. Senator Kerry has declined to do so. And that's the approach that should be taken. All of these ads should be eliminated from the process. That's what we have taken as our position from the very beginning. We even suggested that to the FEC who yesterday finally agreed but unfortunately their rules don't apply during this election process.

BLITZER: But if the president believes John Kerry's service in Vietnam was noble and he has said that, right?

RACICOT: The president has always said he has no reason to say anything other than Senator Kerry's service to this country was honorable.

BLITZER: All right. So why won't he take the next step and say these ads are not honorable?

RACICOT: Wolf, he has said that about all 527 ads are inappropriate. Interestingly Senator Kerry, the other day, everyone reports it as having condemned an ad by one of these groups that have all of these Democratic contributors. He didn't condemn the ad. He said it was inappropriate and then two hours later, one of his main surrogates General Wesley Clark was out parroting the message of the ad.

So let's make certain that the facts are straight here and that people understand precisely the lay of the land.

BLITZER: But what would be so hard for the president to simply say what John McCain has said since the president's already on record as saying that John Kerry's service was noble.

RACICOT: He has said that John Kerry's service was honorable. There's no question about that. The president's service was honorable. We all served in a different fashion during that period of time, some of us were in the Guard, some of us were in active duty, some of us were assigned to Vietnam, some of us weren't. The fact of the matter is the only campaign that's ever called anybody's service into question is John Kerry's campaign.

BLITZER: You know, a lot of people are saying the president won't take that next step and say what John McCain wants him to say, what Chris Shays, a Republican congressman from Connecticut wants him to say, I interviewed him yesterday, because the Republicans, the Bush-Cheney campaign in particular believes these ads are in fact working.

RACICOT: Well, we believe that it's important to focus on his record, on his Senate record and upon all those things that have to do with his future capacity to be a leader, on why he voted for force in Iraq and then months later voted against appropriations to fund the efforts in Iraq. Those are legitimate areas of

inquiry. We just don't believe that we ought to focus on the distant past when we don't think that it has a bearing on his present day capacity to lead this nation. There's more than enough evidence to suggest that his lack of conviction and unsteady hand on the ship of state would not be in the best interests of the American people.

BLITZER: All right. Governor Marc Racicot, we have to leave it right there. Thanks for spending a few moments for us.

RACICOT: Thank you, Wolf.

BLITZER: Republicans have a slim majority in the U.S. Senate but some races clearly tightening right now. Up next, we'll take a closer look toward November. Our political analyst Stu Rothenberg will join us to assess the battle for Senate control. It could be a surprise.

(COMMERCIAL BREAK)

BLITZER: Welcome back. The upcoming election could change the face of Washington and not just because of the presidential race. Republicans have an edge in the U.S. Senate but only slightly. There are 51 Republican senators in that chamber, 48 Democrats, one Independent. The balance of power in the Senate could tip either way, depending on what happens this November. CNN political analyst Stuart Rothenberg joins us now to help sort through what might happen.

It's still very possible the Democrats could get the majority in the Senate or the Republicans could hold on.

STUART ROTHENBERG, CNN POLITICAL ANALYST: That's right. You're absolutely right, Wolf. The Senate is broadly in play, there are enough seats in play, where if the Democrats can cherry pick a handful of Republican seats, hold their own open seats, that's crucial, they have a chance of getting a 50. But I have to tell you, Wolf, that it's a lot easier to see the path for the Republicans holding their majority than it is for the Democrats taking over the Senate.

BLITZER: Several of the swing states have had primary elections, some outcomes that have been relatively good for the Republicans. How does that play out?

ROTHENBERG: I think it's really important. At least three states have had primaries, Republican primaries, where the Republicans appear to have gotten a strong candidate. Initially in South Carolina when Jim DeMint won a crowded primary, he's taking on Inez Tenenbaum. DeMint is an appealing candidate. I think he appears to be ahead in polls both public and private.

The primary result was important in Oklahoma, Tom Coburn won a three-way Republican primary. As it turns out, I believe he's the most formidable Republican opponent for Brad Carson, the moderate Democrat who was very well positioned but maybe not against Coburn.

And in Colorado, a very ideological Republican primary produced Peter Coors who is widely regarded as having broader appeal than former congressman Bob Schaffer.

BLITZER: In Illinois, it's almost certain the Democrats will pick up that seat. Is that right?

ROTHENBERG: I would drop the "almost." Yes, it is certain. If you're interested for entertainment values and looking at Alan Keyes and Barack Obama fine but in terms of a competitive race, it isn't one.

BLITZER: What about Georgia?

ROTHENBERG: Same thing but on the other side. This is the offsetting race where Republican Johnny Isakson and the congressman is now an overwhelming favorite against Denise Majette, the Democratic congresswoman. Republicans are going to win the seat.

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BLITZER: So what's your bottom line as far as some of the surprises that we might -- that theoretically are out there? South Carolina, you mentioned for example. Is Inez Tenenbaum a realistic possibility?

ROTHENBERG: I think she's a very good candidate, she's running a good campaign, she's attractive, personable, and energetic. Her problem is it's a very Republican state.

It seems to me that if the Democrats are going to put this together they're going to have to have wins in Alaska and Colorado knocking off Lisa Murkowski and winning Ben Nighthorse Campbell open seat in Colorado and they're going to have to hold all their seats. That's Tom Daschle, the Florida open, the North Carolina open and the Louisiana open. That is a tough task. It is doable, it would be particularly doable if somehow they could make the Pennsylvania race competitive. That's Arlen Specter. Democrats are talking the race up now but it's still uphill for now.

BLITZER: Will the presidential balloting have a direct impact, do you believe, on some of these close Senate races?

ROTHENBERG: That's a big question, mark. And one state possibly, Pennsylvania, that's part of the reason we're watching Specter. The southeast portion of the state, the Philadelphia suburbs is an area that used to be Republican, moving Democratic, upscale, might go Joe Hoeffle. If so, that would threaten Arlen Specter. But otherwise, a lot of these states will go for Bush. Tom Daschle is going to have to fight a Bush wave. And Murkowski, Alaska's going to go for Bush. The questions are really Pennsylvania, Colorado an open seat where John Kerry has put some focus and of course North Carolina and Florida in the southeast, where Kerry has, you know, a chance, certainly in North Carolina and a very good chance in Florida.

BLITZER: All right, the balance of power in the Senate. Clearly very much hanging up there. Thanks very much.

Defining the government can be risky business for an elected official. Up next, one state governor takes a stand against Washington and brings home the political play of the week.

(COMMERCIAL BREAK)

BLITZER: An elected official takes the stand on an issue important to millions of people but will it pay off politically? Our Bill Schneider is with me now for more on that -- Bill.

SCHNEIDER: You know, defying the federal government is certainly risky for a politician but if it's the right cause, it can make you look like a hero and even get you the political play of the week.

(BEGIN VIDEOTAPE)

SCHNEIDER (voice-over): This week, Illinois Democratic Governor Rod Blagojevich took on the feds.

GOV. ROD BLAGOJEVICH (D), ILLINOIS: Unfortunately, so far, the federal government has failed to act. So it's time that we do.

SCHNEIDER: Current law bans Americans from purchasing prescription drugs from other countries. Where because of government price controls, the cost is substantially lower. In May, Governor Blagojevich dispatched a delegation to Europe to investigate their prescription drug markets. This week, he announced a new program.

BLAGOJEVICH: The state of Illinois will create a website, the first of its kind in the nation that provides access to prescription drugs from Canada and England and Scotland and Ireland. We are forming relationships with specific pharmacies and wholesalers in each country that will offer lower priced prescription drugs to the people of Illinois.

SCHNEIDER: The White House says it's concerned about consumer safety.

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SCOTT MCCLELLAN, WHITE HOUSE PRESS SECRETARY: Right now, we cannot assure the safety of these drugs that would be imported into the United States as a safety matter.

SCHNEIDER: The governor's response?

BLAGOJEVICH: We are talking about the exact same medicines made by the exact same companies.

SCHNEIDER: Polls show the prescription drug programs seniors really want is the ability to buy cheaper drugs from other countries. Someone in the White House is getting that message.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES: There's a lot of pressure in Congress for importation. And so I think it makes sense for us to make sure that we can do so in a safe way. If it's safe, then it makes sense.

SCHNEIDER: It certainly makes political sense.

KERRY: Just the other day, the president began to waiver on this. Do you think he's reading the polls?

SCHNEIDER: Or do you think he's paying attention to Governor Blagojevich's political play of the week?

(END VIDEOTAPE)

SCHNEIDER: Prescription drugs are the only legal item American consumers are not allowed to import. Now, the administration says free trade is less important than protecting consumer safety. Critics say it's all about protecting drug company profits.

BLITZER: I suspect that debate will continue. Bill Schneider with the political play of the week. Thanks very much.

And that's it for today's INSIDE POLITICS. I'm Wolf Blitzer in Washington. I'll be back in a half an hour on "WOLF BLITZER REPORTS." "CROSSFIRE" starts right now. TO ORDER A VIDEO OF THIS TRANSCRIPT, PLEASE CALL 800-CNN-NEWS OR USE OUR SECURE ONLINE ORDER FORM LOCATED AT www.fdcch.com

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ATTACHMENT C

Thursday, May 13, 2004

Joint Statement by Bush-Cheney Campaign Chairman Marc Racicot and RNC Chairman Ed Gillespie on Today's FEC Ruling on 527 Groups

"The FEC's decision today to do nothing to stop the massive spending of soft money "527" committees to influence the 2004 elections is unfortunate, but provides clarity.

"It has always been clear to us that the Bipartisan Campaign Reform Act ("BCRA") and its subsequent affirmation by the Supreme Court would limit the role of political parties in the political process and allow special interest "527" groups to proliferate. We had always assumed however, that the provisions of the Federal Election Campaign Act that have existed since the 1970's and were not changed by BCRA would require the 527s to follow the basic tenets underlying federal campaign finance law.

"We erroneously thought "527" groups would be regulated by their status and their activities. We expected that when one of these "527" groups raised and spent more than \$1,000 for the specific purpose of defeating or electing federal candidates such as President Bush or John Kerry, that particular "527" group would fall under the Federal Election Commission's umbrella as a federal political committee. In other words, the "527" would have to spend and raise federally regulated money, "hard dollars." No corporate money could be raised nor spent and individual contributions would be limited to \$5,000 per year.

"Today's decision to delay addressing fundamental questions regarding the regulation of "527's" is irresponsible. It also sets the stage for a total meltdown of federal campaign finance regulation in 2004 - the first election after BCRA supposedly banned soft money from influencing federal candidates and elections.

"The Commission by its own action, or more precisely inaction, today has given the "green light" to all non-federal "527's" to forge full steam ahead in their efforts to affect the outcome of this year's Federal elections and, in particular, the presidential race.

"Conservative groups now have the go-ahead they were waiting for as the commission has now made clear that these "527" groups will not be affected by the federal campaign finance rules, at least in 2004.

"As FEC Commissioner Michael Toner said, "Delaying a decision is making a decision - namely, that we are not going to issue any regulations for the 2004 elections. We are going to see a new 'soft money' arms race for the 2004 election." (Delay Urged for FEC Action on Pro-Democratic Groups, Washington Post, 5/12/04)

"Look at the blatant anti-President Bush and pro-Kerry activity by MoveOn.org, The Media Fund, ACT and others. Add in their uninhibited coordination with agents of the Kerry campaign and the Democratic Party at the national and state levels.

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Remember that all of this information was known to the FEC during its "527" rulemaking deliberations.

"By today's action, the FEC has sanctioned the activities of these groups. Its decision sends a very clear signal to the political community -- let the "527" battle begin.

"The 2004 elections will now be a free-for-all. Thanks to the deliberate inaction by the Federal Election Commission, the battle of the 527's is likely to escalate to a full scale, two-sided war.

"Groups like the Leadership Forum, Progress for America, The Republican Governor's Association, GOPAC and others now know that they can legally engage in the same way Democrat leaning groups like ACT, the Media Fund, MoveOn and Moving America Forward have been engaging.

"Now that the Commission has spoken, or not spoken, it is all but certain that those groups that would like to see the President re-elected and the U.S. House and Senate remain in Republican control will begin raising and spending money in the same manner as those groups that would like to see the President defeated and the U.S. House and Senate in Democratic control have already been doing. Thanks to the Federal Election Commission, the "527" battle will now rage unabated through Election Day."



Find this item at: <http://www.georgewbush.com/News/Read.aspx?ID=2751>

Paid for by BUSH-CHENEY '04, Inc.

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ATTACHMENT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Bush-Cheney '04, Inc.
PO Box 10648
Arlington, VA 22210

Plaintiff

v.

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Defendant

)
)
)
)
)
CASE NUMBER 1:04CV01612

JUDGE. Emmet G. Sullivan

DECK TYPE: Administrative Agency Review

DATE STAMP. 02/17/2004

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Bush-Cheney '04, Inc., for its Complaint, states as follows:

1. This action challenges the failure of the Federal Election Commission ("FEC") to promulgate regulations to implement the phrase "for the purpose of influencing a federal election" in the definition of the term "expenditure," 2 U.S.C. § 431(9)(A)(i), and "contribution," 2 U.S.C. § 431(8)(A)(i), as those terms are used in the Federal Election Campaign Act, 2 U.S.C. §§ 431 *et seq.*, ("FECA"). This phrase is critically important because it is used to determine which organizations organized under section 527 of the tax law, 26 U.S.C. § 527, are "political committees," 2 U.S.C. § 431(4), under the FECA.

2. On March 27, 2002, President George W. Bush signed into law the Bipartisan Campaign Reform Act of 2002 ("BCRA"), a landmark statute that sought to "plug the soft-money loophole" through which wealthy individuals, labor unions, and corporations had

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contributed vast sums of money to political parties in circumvention of campaign finance limits. *McConnell v. FEC*, 124 S. Ct. 619, 654 (2003). The large corporate, union, and individual contributions that these groups had received are commonly referred to as “soft money.”

3. Prior to *McConnell*, the lower courts had interpreted the phrase “for the purpose of influencing a federal election” to refer to communications that involved only “express advocacy” defined by the “magic words” test of *Buckley v. Valeo*, 424 U.S. 1 (1976). The lower courts, legal scholars, practitioners, and many members of the FEC itself had previously understood the *Buckley* “magic words” test to be a constitutional limitation. Lower courts had therefore limited the reach of FECA to avoid violating their understanding of the First Amendment’s limitations. But the *McConnell* Court ruled that “the unmistakable lesson from the record in this [BCRA] litigation, as all three judges on the District Court agreed, is that *Buckley*’s magic-words requirement is functionally meaningless.” *McConnell*, 124 S. Ct. at 689.

4. After the Supreme Court upheld the soft-money ban, individuals and groups, most in opposition to President Bush, turned to a new strategy that they believed might allow them to continue to spend soft money in an effort to influence federal elections while avoiding words of express advocacy, a test the Supreme Court itself has now rejected.

5. Rather than giving soft money directly to the national political parties, Democratic activists organized their own shadow political parties, staffed by former party operatives, and dedicated to spending money raised to oppose the re-election of President Bush and to benefit their party’s presidential nominee, John Kerry.

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6. During the course of the current federal election cycle, numerous organizations, all of which are organized as “political organizations” under the Internal Revenue Code, 26 U.S.C. § 527, have raised and spent large sums of money from sources and in amounts not permissible under the FECA. As Senator John McCain, one of BCRA’s sponsors explained, “[u]se of soft money by 527 groups whose major purpose is to affect federal elections is not legal.”¹ The FEC likewise concluded, in an advisory opinion, that a political committee already registered with the FEC that seeks to spend its money to influence a federal election must raise that money in compliance with the “hard money” restrictions of the campaign finance laws. See FEC Advisory Opinion 2003-37.

7. To date, however, the FEC has refused to issue regulations that interpret the FECA in light of the Supreme Court’s *McConnell* decision. In light of the Supreme Court’s recent decision in *McConnell*, the FEC’s failure to issue any new rule on the definition of the phrase “for the purpose of influencing a federal election” improperly and inadequately implements the law. This regulatory inaction appears to allow multiple section 527 groups, which are currently raising and spending enormous amounts of money, to operate outside of the prohibitions and limitations of the FECA despite the declared purpose and intent of the organizations and for the purpose of influencing the 2004 presidential election.

8. Members of the FEC recognized the problem and acknowledged that there is not likely to be any action to reign in tens of millions of dollars spent in violation of the FECA this election cycle. Indeed, after the FEC failed to pass a regulation in May of 2004 that would be effective for this election cycle, FEC Commissioner Michael Toner stated, “The election of 2004 is going to be the Wild West. . . . We are going to see a dramatic escalation

¹ Statement of Senator McCain, U.S. Senate Committee on Rules and Administration, Mar. 10, 2004.

of soft-money spending by organizations on both sides of the aisle.”² Commissioner Toner’s comment foresaw exactly what has happened in the months since the FEC failed to act.

9. The FEC’s failure to issue new rules to clearly implement the law in order to end the ongoing evasion, circumvention, and subversion of the FECA by these section 527 organizations is unlawful.

10. The United States Court of Appeals for the District of Columbia Circuit has held that agencies have a general obligation to engage in “reasonably prompt decisionmaking.” *MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980). “Excessive delay saps the public confidence in an agency’s ability to discharge its responsibilities and creates uncertainty for the parties, who must incorporate the potential effects of agency decisionmaking into future plans.” *PEPCO v. ICC*, 702 F.2d 1026, 1034 (D.C. Cir. 1983).

11. Particularly in the election context, this Court has recognized that the need for prompt agency action is particularly acute in the context of the FEC’s supervision of the electoral process:

These concerns are obviously strong in an election context, where it is crucial that “public confidence” and trust in the integrity of the process be maintained, and where continuing uncertainty over the legality or illegality of a particular campaign practice can be highly disruptive of candidates’ abilities to “plan” and conduct their electoral efforts.

Rose v. FEC, 608 F.Supp. 1, 10 (D.D.C. 1984). The fact of a pending election weighs strongly in favor of the need for prompt agency action. *Id.* at 8.

12. Courts have repeatedly addressed the same soft money claims at issue here. Years before the Supreme Court’s decision in *McConnell*, this Court said of the soft money

² Thomas Edsall, “In Boost for Democrats, FEC Rejects Proposed Limits on Small Donors,” *Washington Post*, May 14, 2004.

issue: "Although lives do not hang in the balance, the climate of concern surrounding soft money threatens the very corruption and appearance of corruption by which the integrity of our system of representative democracy is undermined, and which the FECA was intended to remedy. Soft money does not present discrete and isolated FECA violations, but allegedly comprises system-wide abuse." *Common Cause v. FEC*, 692 F. Supp. 1397 (D. D.C., 1988)

13. The FEC's failure to act in this matter, especially in the face of a compelling public need, is unlawful under the Administrative Procedure Act. 5 U.S.C. §§ 551 *et seq.*

Jurisdiction and Venue

14. This action arises under the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155; the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-706; and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

15. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(e) because the Defendant is a United States agency and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

Parties

16. The Plaintiff, Bush-Cheney '04, Inc., ("BC '04") is a Virginia corporation, with its principal headquarters in Virginia. It is the federally registered political committee that is the principal campaign committee for President Bush and Vice-President Cheney as they seek re-election in November 2004.

17. The failure of the FEC to issue rulings to implement the law has materially and adversely affected BC '04 as it attempts to convey to the American people the message and vision of President Bush and Vice President Cheney.

18. As the principal campaign committee of federal candidates for President and Vice President, BC '04 is subject to the source and amount limitations of the FECA. In financing expensive broadcast advertising and get out the vote efforts, BC '04 is not permitted to raise and spend corporate funds or multi-million dollar individual contributions.

19. Because the FEC has failed to take action that only it has the statutory power to undertake, section 527 political organizations that refuse to comply with the FECA have caused BC '04 particularized and concrete injury, and will continue to cause such injury.

20. As the principal campaign committee of the Republican Party's candidates for President and Vice-President of the United States, Plaintiff is and will be regulated by the FECA. Plaintiff is among those which the FECA is designed to regulate to ensure that those organizations engaging in activity for the purpose of influencing a federal election all follow the same rules.

21. If the FEC continues to fail to promulgate regulations to implement the phrase "for the purpose of influencing a federal election," the Plaintiff is and will continue to be forced to engage in an election system that is awash in a flood of illegal money that Congress intended to ban from influencing federal elections.

22. Plaintiff does, and will continue to suffer from a lack of information that the Supreme Court made clear Plaintiff and the public are entitled to under the FECA unless the FEC acts to implement existing law.

23. If the Commission's failure to issue regulations regarding "political committee" status is allowed to stand and to undermine the FECA, the plaintiffs will be forced to discharge their public responsibilities, in a system that Congress has determined is, and appears to be, harmed by the influence of spending by unregulated groups, including section

527 groups, that operate in federal elections outside the registration requirements, contribution limits, source prohibitions and reporting obligations of the FECA. Further, by thwarting and undermining the FECA, the failure to promulgate regulations will also adversely affect the public's perception of plaintiffs and their fellow office-holders as candidates, public officials and party members.

24. The Defendant, FEC, is an agency of the United States created pursuant to the FECA, 2 U.S.C. § 437c, with its headquarters in Washington, D.C., whose purpose is to enforce the federal election laws, including the requirement that expenditures for the purpose of influencing a federal election be paid for with funds subject to the prohibitions, limitations and reporting requirements of the FECA.

25. The FEC is charged with the affirmative duty to promulgate rules necessary to carry out the FECA. 2 U.S.C. § 437d(a)(8).

FEC's Failure to Apply the Definition of Political Committee

26. Under the law, any entity that receives "contributions" (as defined in the FECA) or makes "expenditures" (as defined in the FECA) of more than \$1,000 in a calendar year meets the definition of a "political committee" and must file a "statement of organization" and periodic disclosure reports of its receipts and disbursements with the FEC. 2 U.S.C. §§ 433-34.

27. In addition, a "political committee" is subject to contribution limits, *id.* §§ 441a(a)(1), 441a(a)(2), and source prohibitions, *id.* § 441b(a), on the contributions it may receive and make. *Id.* § 441a(f). These rules apply even if the political committee is engaged only in independent spending. 11 C.F.R. § 110.1(n).

28. An "expenditure" under the FECA "includes payments," 11 CFR § 100.110(a), "made by any person for the purpose of influencing any election for federal office." 11 CFR § 100.111(a). *Buckley* held that these expenditures were defined as "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." 424 U.S. at 44. The *Buckley* Court limited express advocacy to "magic words" such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." *Id.* at 44 n.52.

29. The *McConnell* Court recently expanded the types of communications that are regulated by the FECA by holding that advertisements that "promote, support, attack or oppose" a clearly identified federal candidate "undoubtedly have a dramatic effect on federal elections" and such communications can be regulated without violating the First Amendment. *McConnell*, 124 S. Ct. at 675.

30. At issue in this complaint is the application of the statutory phrase "for the purpose of influencing any election for federal office." 2 U.S.C. § 431. The FEC has historically sought to expand this statutory language beyond the "magic words" established in *Buckley*. See, e.g., *FEC v. Central Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 53 (2d. Cir. 1986) ("The FEC would apparently have us read 'expressly advocating the election or defeat' to mean for the purpose, express or implied, of encouraging election or defeat."); and *FEC v. Furgatch*, 807 F.2d 857, 861 (9th Cir. 1987) ("The FEC further argues that the [communication at issue] is, in the words of the Supreme Court . . . unambiguously related to the campaign of a particular federal candidate. Nothing more, it contends, is required to place this advertisement under coverage of the Act.") (internal quotations and citations omitted).

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31. Prior to *McConnell*, the lower courts had rejected the FEC's arguments and interpreted this phrase to mean communications that involved only "express advocacy" using *Buckley's* "magic words." The lower courts had nearly universally understood this to be a constitutional limitation. See, e.g., *Clifton v. FEC*, 114 F.3d 1309, 1312 (1st Cir. 1997); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 387 (2d. Cir. 2000); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (4th Cir. 1997); *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (5th Cir. 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 968-70 (8th Cir. 1999); *Citizens for Responsible Gov't. State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (10th Cir. 2000); cf. *FEC v. Furgatch*, 807 F.2d 857, 862-863 (9th Cir. 1987).

32. But the *McConnell* Court ruled that, "the unmistakable lesson from the record in this [BCRA] litigation, as all three judges on the District Court agreed, is that *Buckley's* magic-words requirement is functionally meaningless." *McConnell*, 124 S. Ct. at 689.

33. Given this analysis by the majority, dissenting Justice Thomas noted, the holding in *McConnell* that the "express advocacy test" was no longer a constitutionally mandated limit meant that *McConnell* effectively overruled lower court decisions applying and upholding *Buckley's* "express advocacy" standard. *Id.* (Thomas, J., dissenting).

34. At the same time that the Supreme Court eschewed the express advocacy standard, it affirmed, in the context of "federal election activity," that the test of "promote, oppose, attack, and support clearly set forth the confines[,] provides explicit standards for those who apply them and gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Id.* n.64 (internal quotations omitted). By adopting this standard, the *McConnell* Court expanded the reach of the FECA beyond "express advocacy"

and returned the state of regulations to the statutorily imposed standard “for the purpose of influencing and election for federal office.” 2 U.S.C. § 431(9)(A)(i).

35. The FEC’s failure to adopt any new regulation or to take any other action setting forth clear standards for when Section 527 groups are required to register as political committees appears to allow Section 527 groups to continue spending unlimited amounts of unregulated soft money to influence federal elections, both in 2004 and in the future. This failure undermines the FECA and is contrary to law.

Failure of the FEC to Act on its own Advisory Opinion

36. The FEC affirmed in February of this year that the FECA requires any communication by a federal political committee registered under the FECA that “promotes, supports, attacks or opposes” a federal candidate to be paid for under the “hard dollar” rules of the Act. Advisory Opinion 2003-37 (“AO 2003-37”). The FEC, citing *McConnell*, held that communications referring to a clearly identified federal candidate that promote, support, attack or oppose that candidate are for “the purpose of influencing a federal election” within the meaning of the FECA. *Id.* (citing *McConnell*, 124 S. Ct. at 675 n.64). The FEC explained that “communications that promote, support, attack or oppose a clearly identified Federal candidate” have a “dramatic effect” on federal elections. *Id.* at 3.

37. In AO 2003-37, the FEC told Americans for a Better Country (“ABC”), a political committee, that it could not use donations from individuals in excess of the FECA’s limits or from sources prohibited by the FECA for communications that “promote, support, attack or oppose” a candidate for federal office. *Id.* at 9-10.³

³ The full text of the question and the FEC’s answer follows:

3. You indicate that ABC may fund a communication that states: “President George W. Bush, Senator X and Representative Y have led the fight in Congress for a stronger defense and stronger economy.

38. In AO 2003-37, the FEC also advised ABC that a political committee could not solicit non-federal funds in fundraising communications that conveyed ABC's support or opposition to a specific federal candidate. *Id.* at 19-20. The FEC determined that 2 U.S.C. § 431(8) means that federal political committees can only raise funds using such solicitations if the funds are subject to the prohibitions and limitations of the FECA.

39. In addition, the FEC found that communications for political committees' voter identification, voter registration, or get-out-the-vote purposes that are not coordinated with a candidate and that do not refer to any federal candidate still must use federal funds in proportion to the number of federal and non-federal candidates on the piece or on the handout because the activities are for the purpose of influencing a federal election. *See* 11 C.F.R. § 106.1.

40. The FEC determined that soliciting soft money "by using the names of specific Federal candidates in a manner that will convey [its] plan to use those funds to support or oppose specific federal candidates." constitutes an illegal contribution subject to the FECA's

Call them and tell them to keep fighting for you." May ABC pay for this communication containing no express advocacy solely with donations from individuals that exceed the Act's limitations?

No. If the communication meets the criteria of an electioneering communication, it must be treated as an expenditure when made by a political committee. ...

Even if it does not have all the characteristics of an electioneering communication, it still must be treated as an expenditure and paid for entirely from ABC's Federal account for the following reasons. The communication you intend to produce would promote or support candidates for Federal office by proclaiming that those candidates have "led the fight in Congress for a stronger defense and stronger economy." As explained above in the introduction to the legal analysis, a payment for a communication that promotes, supports, attacks, or opposes a clearly identified Federal candidate is "for the purpose of influencing a Federal election" when made by a political committee and is therefore an "expenditure" within the meaning of 2 U.S.C. § 431(9) that must be paid for entirely with Federal funds. Moreover, there is no basis under 11 CFR § 106.1 for allocating the costs of this communication between ABC's Federal and non-Federal accounts, because the communication refers only to Federal candidates. Nor is allocation between ABC's Federal and non-Federal accounts permissible under 11 CFR § 106.6. Those allocation provisions explicitly do not cover candidate-specific communications. *See* 11 CFR § 106.6(b)(2)(i) and (iii). Consequently, because the payments for the communications you propose to run will be expenditures regulated under the Act, ABC must pay for these ads entirely with funds that comply with the Act's various limitations, including individual contribution limitations.

contribution and source limitations. AO 2003-37, at 19-20. Such solicitations, the FEC determined, violate federal law. 2 U.S.C. § 431(8).

41. However, the FEC declined at that time to make a determination about what threshold an organization that was not already a federally registered political committee must cross before it is required to register with the FEC and comply with the prohibitions and limitations of the FECA.

Failure of the FEC to Act on Administrative Complaints

42. In March of 2004, BC '04 filed two administrative complaints with the FEC seeking action by the FEC to enforce the law that requires a section 527 group, whose purpose is to influence the November 2004 presidential election, to register as a political committee. To date, the FEC has taken no action on those complaints, nor has it undertaken any publicly disclosed action on its own initiative to enforce the law.

43. On September 1, 2004, BC '04 filed *Bush-Cheney '04, Inc. v. FEC*, 04-CV-1501 (D.D.C.), a lawsuit under 2 U.S.C. 437g(a)(8), because the FEC has failed to act on the administrative complaints within 120 days of the filing of those complaints as required by law. On September 15, 2004, Judge James Robertson of the United States District Court for the District of Columbia denied BC '04's Application for a Preliminary Injunction against the FEC. The underlying matter is still pending before the court, and the FEC will file its response on November 1, 2004.

Failure of the FEC to Act Through Rulemaking

44. In March of 2004, the FEC issued a Notice of Proposed Rulemaking in which it acknowledged that rulemaking was necessary "to revisit the issue of whether the current definition of 'political committee' adequately encompasses all organizations that should be

considered political committees subject to the limitations, prohibitions and reporting requirements of FECA.” 69 Fed.Reg. 11736.

45. In May of 2004, the FEC approved the recommendation of its general counsel to defer the rulemaking for 90 days. The general counsel told the FEC at that time that the NPRM “was prompted” by the Supreme Court’s decision in *McConnell*, which presented the question of whether “law and common sense dictate” that groups devoted to influencing federal elections “be considered political committees.” FEC Agenda Document 04-48 at 3-4.

46. In August of 2004, the FEC concluded its rulemaking proceeding by promulgating rules on two collateral matters but refused to issue any rule addressing the central question that had prompted the rulemaking in the first place: the definition of a political committee and the requirement for Section 527 groups to register as political committees.

Legal Basis for Challenging the FEC’s Failure to Act

47. It is well-settled that an agency is not precluded from announcing new principles in an adjudicative proceeding. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974). Rather, the choice between rulemaking and adjudication lies in the first instance within the agency’s discretion. *Id.*; see also *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998). However, the FEC must choose one or the other or it violates Section 706(1) of the APA and the FECA.

48. After reviewing the record of the FEC’s failure to act, and in light of the importance of the integrity of federal elections, this Court should not defer to the FEC. The FEC’s failure to issue regulations governing activity by section 527 groups undertaken for

the purpose of influencing federal elections, and by extension determining when such groups are required to register as political committees, is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. The FEC's failure to act is therefore contrary to 5 U.S.C. § 706(2)(A).

49. The FEC's failure to act by issuing regulations to enforce the Supreme Court's decision in *McConnell* constitutes agency action unlawfully withheld or unreasonably delayed. As such, it is contrary to 5 U.S.C. § 706(1).

50. The FEC has itself concluded that a rulemaking is necessary "to revisit the issue of whether the current definition of 'political committee' adequately encompasses all organizations that should be considered political committees subject to the limitations, prohibitions and reporting requirements of FECA." 69 Fed.Reg. 11736.

51. The FEC failed to articulate a rational basis for its decision not to adopt regulations to require section 527 groups to register as political committees when they raise or spend more than \$1,000 for the purpose of influencing a federal election.

52. Moreover, the FEC has failed to provide any rational explanation for its rejection of alternative approaches to the regulation proposed in the NPRM, including recommendations by the FEC's own general counsel, several Commissioners, and members of the public who commented on the proposed regulations. For these and other reasons, the FEC's failure to issue the regulations described above is contrary to 5 U.S.C § 706(2)(D).

53. Apart from the provisions of 2 U.S.C. §437g(a)(8)(C), there is no private right of action available to Plaintiff to enforce the FECA against an alleged violator. *Perot v. FEC*, 97 F.3d 553, 558 n.2 (D.C. Cir. 1996). As such, Plaintiff has no alternatives to requesting relief from this court.

Requested Relief

54. Plaintiffs request the following relief:

A. That the Court declare the FEC's failure to issue appropriate regulations implementing the statutory phrase "for the purpose of influencing a federal election" constitutes agency action unlawfully withheld and an abuse of the FEC's discretion;

B. That the Court issue an order requiring the FEC to commence proceedings to promulgate, on an expedited basis, appropriate regulations implementing the statutory phrase "for the purpose of influencing a federal election," and by extension address which organizations are "political committees" under the FECA;

C. That the Court retain jurisdiction over this matter to ensure the FEC's timely and sufficient compliance with the Court's decision; and

D. That the Court grant such other and further relief as it deems proper.

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Respectfully submitted,



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September 17, 2004

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ATTACHMENT E

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CBS News Transcripts

SHOW: Face the Nation (10:30 AM ET) - CBS

August 15, 2004 Sunday

TYPE: Interview

LENGTH: 2866 words

HEADLINE: Matthew Dowd, Tad Devine and Nina Easton discuss the presidential race

ANCHORS: BOB SCHIEFFER

BODY:

BOB SCHIEFFER, host:

And we'll use that as a transition to say we're going to shift now from the hurricane to politics which is what we had in the beginning originally planned to focus on this morning on **FACE THE NATION**. With us here in the studio, **Bush** campaign strategist **Matthew Dowd**. His counterpart in the **Kerry** campaign **Tad Devine**, and joining in our questioning **Nina Easton** of *The Boston Globe*.

Well, gentlemen, let's put catastrophe, the tragedy, all of that aside. Both of you know as experienced politicians that sometimes at the very lowest local level right up on the way, campaigns have been won or lost by how government reacted to disasters whether it's getting the streets cleaned with snow to whatever.

Mr. Dowd, do you think that this hurricane will have a political impact on Florida which is a very key state?

Mr. MATTHEW DOWD (Bush Campaign Strategist): First, as everybody else's are, our hearts and souls are with the folks that have been dealt this catastrophe in Florida. I don't think it'll have a political impact--joining with the **Kerry** campaign in doing everything we can to help people through this. And I just don't see people are going to see this through a political lens. The--**FEMA's** responded, the governor of Florida's responded, the federal government's responded, and I think people are--we're going to try to get people's lives back together, and I don't think it'll have a political impact.

Mr. TAD DEVINE (Kerry Campaign Strategist): I agree with Matt, Bob. I think--you know, Senator **Kerry** has asked the people working in our campaign to volunteer in communities around Florida. This is not a political issue. We support--he supports the efforts of the federal and state government to provide relief for people who've been terribly affected by this disaster.

SCHIEFFER: **Nina?**

Ms. NINA EASTON (The Boston Globe): Matthew, George **Bush** lost the popular vote in 2000. Since then the president's been dogged by an unpopular war, by soft spots in the economy and by a Democratic base that seems more energized than ever to get **Bush** out of office. Where are those voters going to come from in this very tight race? I assume you want to win the popular vote. Where are they going to come from?

Mr. DOWD: Yeah, we'd certainly like to win the popular vote and win the Electoral College vote so we don't have to have 36 or 37 days in Florida again. I mean, the interesting thing about this is 2000 ended

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dead even, and today we basically start the race again dead even. And it's--we're--in some polls we're up, in some polls we're down, but basically this race is dead even once again. And my guess is it'll be that way again in Labor Day.

I think what you'll see is you're probably going to have seven or eight million people more vote this time than last time. So I think both sides start out with a pretty solid base of voters. The Republicans are actually as energized or more energized than their Republican counterparts. You look at an intensity, you look at in on support of the president; the president's support today is actually about 91 or 92 percent among our base, which is higher than we ended in 2000. So I think a big part of this campaign is to go after those folks, the seven or eight million new people that are going to vote in this election.

SCHIEFFER: Tad Devine, let me ask you something. The president's approval rating went up about 6 points since the beginning of August. Did he wind up getting the bounce out of the Democratic convention?

Mr. DEVINE: No, I don't think he did, Bob. I mean, listen, you can look at a lot of polls. There's, you know, your own CBS poll, for example, which has John Kerry 6 or 7 points ahead, depending on the horse race and who's in it. I don't think the president was helped by our convention. I know John Kerry was. The American people now see him as someone they can trust as commander in chief more so than the president. They heard his story. They heard his message about making America stronger at home, respected in the world. He's been out there campaigning, infusing meaning into those words. So I agree with Matt; I think we have a close race, but I think the opportunities for John Kerry and John Edwards are much bigger than they are for the president, because the president has a record that he must defend, and it's a record the American people simply don't approve of.

SCHIEFFER: Well, Matthew Dowd, the vice president said the other day that John Kerry lacks a deeply held conviction about right or wrong. What evidence do you have to make a statement like that?

Mr. DOWD: Well, I think what the vice president was referring to is that, for some reason, John Kerry doesn't want to talk about his 19-year record. He wants to sort of run away from it. He's a person that over the last two or three years voted for No Child Left Behind, and now is against No Child Left Behind. He voted for the Patriot Act; he now is against the Patriot Act. He voted for the Iraq War resolution, and now we're still trying to figure out exactly what he is. The last statement they had was that he was for the war. So I think the vice president's pointing out there's a--indecisiveness or a shift with the political winds. The New York Times, not a paper of record for the Bush campaign, this morning in their editorial basically said his stand on Iraq has been determined by political expediency, not by what's the right or wrong thing to do.

SCHIEFFER: What do you say to that, Tad Devine?

Mr. DEVINE: Well, I say in that same editorial they blasted the president for his policies and his credibility. So listen, I think the vice president, in statements like the one you just alluded to, Bob, has really lost credibility in this campaign. I mean, the attacks that he's raised are not serious, and I think they're not taken seriously by voters. And we'll have a lot of this debate. They'll pull words out of context, they'll try to impute them to Kerry or Edwards. The American people want a real discussion of the issues of jobs, of health care, of how you're going to defend this nation. Kerry and Edwards are providing it. Bush and Cheney are not.

Ms. EASTON: Tad, ever since Senator Kerry said he would have voted to give the--to authorize the president to go to war in Iraq...

Mr. DEVINE: Right.

Ms. EASTON: ...regardless of the facts that we now know...

Mr. DEVINE: Right.

Ms. EASTON: ...President Bush is trying to turn this to his advantage. And clearly, you were trying to

make Senator Kerry look like a firm, resolute leader, not a flip-flopper. But is that coming back to haunt him at all? Do you regret those words?

Mr. DEVINE: No. And first, we're not trying to make him look like anything. He is who he is. He has a remarkable record of defending this nation. He's defended it for 30 years. He feels that it was right and proper to authorize the use of force in Iraq to hold Saddam Hussein accountable. But he also understands and has explained that everything the president did in the wake of that was wrong--his alienation of our allies, his refusal to exhaust remedies at the United Nations, his refusal to go to war as a last resort has put this nation in Iraq today in a dangerous situation. And now today American troops and American taxpayers are bearing the burden in Iraq almost alone because of the failures of the president's policies.

SCHIEFFER: The president has put the nation in a dangerous situation, Matthew Dowd?

Mr. DOWD: I think any person that's not in sort of the political debate would agree that the world is a better place because Saddam Hussein is no longer in power and that we now have 50 million people in Afghanistan and Iraq that are now not under brutal dictatorships. I think it's unfortunate that we keep saying that no--he went it alone when 30-some-odd countries have joined us in Iraq, when 60-some-odd countries have joined us in Afghanistan. We have more countries involved in this war in Iraq than we had in Bosnia, which Senator Kerry supported. And the thing that I think disturbs a lot of Americans is that when a senator gets a war resolution across his desk, and decide whether he needs to vote for it or vote against it. It's not something to send a message, as Senator Kerry said in 1991 on the Gulf War resolution. He said it wasn't to send a message. It was a message to go to war. He knew what he was voting on. He knew what the president, who had been talking about this for a year, and I just think he's tried--in the primary was a dove, in the general election he's now trying to become a hawk again. So I think it's a problem, and I think he's going to have to deal with it.

SCHIEFFER: But when you say all these nations are involved, sure, they're involved, but nobody seems to be sending any troops. I mean, that's the problem you have. The British did, of course, and the Australians did, of course, the Poles did, of course.

Mr. DOWD: The Japanese did.

SCHIEFFER: But I mean, in the hundreds. I mean, you can't say that they were equal partners in this fight.

Mr. DOWD: Well, I think anybody that sent--whether it's resources, whether it's men and women that are fighting this, whether it's people trying to keep the peace, whether it's people that are building roads in an environment that is very hazardous, I don't think you should discount those. And I think Senator Kerry has discounted the contributions of our allies around the world in what has, in fact, made the country and the world a better place.

Mr. DEVINE: Well, listen, I think they've been discounted for a very good reason. Ninety percent of the costs of the war are being borne by American taxpayers. Ninety percent of the casualties are American troops, OK? And that's the reality of what's going on in Iraq today. The president has failed to build a broad international coalition, as his father did, by the way, in the first Gulf War. And the failures of the Bush policy today are hurting America. Of course the world is a safer place with Saddam Hussein in a jail cell. But is America a stronger place? That's the issue in this campaign.

Mr. DOWD: But Bob...

SCHIEFFER: Let me just interrupt.

Mr. DOWD: One quick thing real quick. It's interesting that they say that--the Kerry campaign says that his father did the right thing, but in that case, he voted against the resolution. And now this president, George W. Bush, he voted for the resolution. So which one was his vote wrong? This one where he said the president misled or that one where he said the president was doing the right thing?

Mr. DEVINE: Well, neither. And John Kerry and many Democrats, like Sam Nunn, for example, felt diplomacy might go a long way in that situation. But John Kerry is prepared to use force to defend America. He said so. He's prepared to defend this country which he has been doing for 30 years.

SCHIEFFER: He also says that he believes he can get the NATO allies to send more troops in there.

Mr. DEVINE: Yes.

SCHIEFFER: I find no evidence that any NATO ally is willing to send troops at this point.

Mr. DEVINE: Well, the--certainly at this point, that's correct. They won't. As long as George Bush is president of the United States, the bridges that he has burned with our allies, I think, are going to make it impractical...

SCHIEFFER: Well, he even suggested at one point that if he were president, they would do it, but as long as George Bush is president, they won't.

Mr. DEVINE: Well, I think--listen, I think if John Kerry is president, we're going to have a chance for a fresh start with our allies. I mean, the fact is the president has turned his back on traditional alliances, which have defended this nation for the better part of the last century. And that has cost America very dearly.

Ms. EASTON: Matthew, why hasn't the president, like Giuliani, like Senator McCain, condemned these anti-Kerry swift boat ads that question his service in Vietnam? Is part of that a legal issue in that you aren't allowed to look like you're colluding with these 527 independent organizations on some level? I mean, what is going on there?

Mr. DOWD: Well, first is the president has said and the campaign has said: We will never question and have never questioned John Kerry's service in Vietnam. We've never done that. Even though they've questioned the president's service in the National Guard, we have never questioned John Kerry's service. We are all for every one of these 527s and independent groups taking their spots off the air. We have a group, the Swift Boat Veterans, that have spent about \$200,000. We've had \$50 million spent against us by the folks that are Kerry's allies in this campaign. We'd be happy all of them be banned and all of them take all their ads off the air, but the Kerry campaign doesn't seem to want to join us in that.

Ms. EASTON: But why not condemn it? Why not condemn this ad...

Mr. DOWD: Well...

Ms. EASTON: ...and what--questioning a war hero's record?

Mr. DOWD: Again, we'd be happy for all the ads to be off the air. This is an independent group that--we have a First Amendment in this country. These are people that served in Vietnam. Some of these officers served alongside Senator Kerry. They have a right to--as anybody, to bring up what they believe. We don't have a say-so in whether or not they run these ads or not.

Ms. EASTON: But wouldn't it send the right signal if you did--if the president did stand up and...

Mr. DOWD: Yeah. Listen, we would welcome all the third-party ads which we thought was going to be done by--when the president signed McCain-Feingold, being banned from the air. They're not. We'd be happy they're all off the air.

Mr. DEVINE: This is the Bush tactic. It's precisely what they did to Senator John McCain in the South Carolina primary four years ago. The president stands there silently. He was asked in a town meeting the other day about this, and he just sort of, you know, said nothing and turned his shoulders. The president should do the right thing.

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Mr. DOWD: That's actually not true.

Mr. DEVINE: John--well, he...

Mr. DOWD: He said that he would never question Senator Kerry's service and he thought Senator Kerry's service in Vietnam was noble. That's what he said.

Mr. DEVINE: Well, he did say it was noble on "Larry King," but in a town meeting the other day, he turned his back to it. And I'll tell you what, John McCain is right. This is dishonest and dishonorable, and John McCain was right to call on the Bush campaign to disavow this, and it's sad for this country that this president refuses to do so.

SCHIEFFER: Do--although you'd like to see all these ads off the air in this case, do you think that the Bush campaign is helped in any way by this ad?

Mr. DOWD: I don't know how much these third-party ads and what their contribution is to the political discourse. I think you deal with them as they come. I don't know. I mean, I--we're not talking about it. The campaign's not putting any commercials. The campaign doesn't talk about it. We respect Senator Kerry's service in Vietnam, and we want to talk about other issues and where the country's headed.

SCHIEFFER: Where do you think the economy is at this point? I'd like to hear from both of you.

Mr. DEVINE: Well, the economy's in trouble. I think it's clear, we saw the jobs report from last month; 32,000 jobs created in this country, far less than we need. We saw the CBO study this week that says the burden of taxation is being shifted from the wealthiest Americans to the middle class. We saw the trade report on Friday saying the trade deficit increased 19 percent; seven of the last eight months, the highest trade deficit on record. The economy has not turned the corner, as the president said. The economy's in trouble, and until we have a president who can recognize the reality of the trouble of America's economy, we're not going to be able to create the jobs we need.

Mr. DOWD: Bob, this is the same economy that Senator Kerry's advisers, like Gene Sperling, said was that--what Bill Clinton wanted to run on. There's 5.5 percent unemployment in 1996. There's 5.5 percent unemployment today. Homeownership is up five points over what it was in 1996. Inflation is over what it was up--is lower than what it was up in 1996. The number of jobs created in the first six months of this year, almost exactly the same as it was in 1996. So if Bill Clinton and his advisers, which are now advising John Kerry's campaign, think it was a great economy in 1996, we actually think it's a pretty good economy. We want to do more, and we're not going to stop until every American has a job.

Mr. DEVINE: You know, Bill Clinton would not have been the first president since Herbert Hoover to preside over net job loss. George Bush will be. That's a different record altogether.

SCHIEFFER: The old clock just struck time out.

We'll be back in a moment with another FACE THE NATION 50th anniversary Flashback. Thanks a lot, folks.

Mr. DEVINE: Thank you. Thank you very much.

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ATTACHMENT F

The Associated Press State & Local Wire

August 20, 2004, Friday, BC cycle

Democrats say GOP backs Gainesville anti-Kerry rally; GOP denies

By KEN THOMAS, Associated Press Writer

The squabble over Democratic presidential nominee John Kerry's war record came to Florida on Friday, with Democrats accusing the Bush campaign of promoting a Gainesville rally featuring an anti-Kerry group.

Florida Democratic Party chairman Scott Maddox said fliers for Saturday's rally featuring "Swift Boat Veterans for Truth" were distributed at the Alachua GOP headquarters, which houses the local Bush campaign office.

Bush campaign spokesman Reed Dickens said the presidential campaign "had absolutely nothing to do with this Swift boat organization."

The veterans group has launched advertising in three battleground states asserting Kerry lied about the events that earned him five medals in Vietnam. A flier for the rally lists "Swift Boat Vets for Truth" in a box that includes Alachua County Republicans, Veterans for Bush, Alachua Bush/Cheney Committee and others.

One of the scheduled speakers was Joe Ponder, a veteran who is featured in the ad.

"The Bush campaign has repeatedly denied any involvement with this group, but now we know the real truth," Maddox said. "While George Bush falsely declares his respect for John Kerry's war record, his henchmen on the ground in Florida are attacking it under the radar."

Dickens noted that the Swift boat campaign is a "527" organization, advocacy groups named for a section of the tax code. They claim independence from parties and campaigns and can raise endless amounts of "soft money" and spend it for or against whatever target they choose.

"The president has spoken out clearly against all negative activity by 527 organizations," Dickens said. "I'm surprised the Kerry campaign can attack on this issue with a straight face considering the coordinating they've had with major 527 organizations."

MoveOn.org, a liberal group funded by Kerry supporters, has aired an ad accusing Bush of using family connections to avoid the Vietnam War. It also pressures the president to denounce the ad aired by "Swift Boat Veterans for Truth."

Mike Bradley, a Vietnam veteran from Gainesville, said the idea for the rally "started over a couple of beers at the VFW" by a "ragtag" group of veterans and had no connection to the Bush campaign. He said Ponder and others were paying their own way to attend.

"We just bought \$31 worth of posterboards and magic markers" to make signs for the rally, Bradley said. "That's how professional we are."

Travis Horn, chairman of the Alachua Republican Party, said he did not know who had produced the flier. He said the county organization had not planned the rally.

But Matt Miller, a Kerry spokesman in Florida, said, "it's pretty clear now that the Bush campaign is outright involved with this group and this rally in Gainesville. They ought to renounce the lies that they put on the airwaves and they ought to renounce this rally."

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ATTACHMENT G

Saturday, August 21, 2004

Statement by Bush-Cheney '04

ARLINGTON, VA -- "Colonel Ken Cordier is an American hero who spent over six years in a North Vietnamese prison camp. Col. Cordier was a supporter of the President during the 2000 election and served as a member of the President's veterans' steering committee during this election. Col. Cordier did not inform the campaign of his involvement in the advertisement being run by a 527 organization. Because of his involvement with this 527, Col. Cordier will no longer participate as a volunteer for Bush-Cheney '04, unlike Harold Ickes who is leading two prominent 527s and remains an executive committee member of the Democratic National Committee."

- Steve Schmidt, Bush-Cheney '04 Spokesman



GeorgeWBush.com

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Paid for by BUSH-CHENEY '04, Inc.

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